

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-2175

B
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United States Court of Appeals

FOR THE SECOND CIRCUIT

In the Matter of Zalmen A. Dunn,
Bankrupt,

ZALMEN A. DUNN,

Bankrupt-Appellant,

—against—

SAMUEL A. ARUTT,

Trustee-Appellee.

On Appeal from the United States District Court
Eastern District of New York

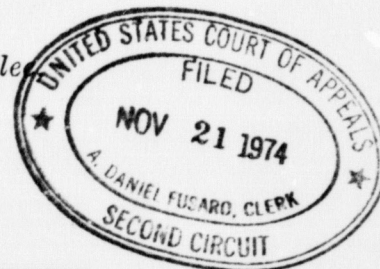
JOINT APPENDIX

LEVIN & WEINTRAUB,
Attorneys for Bankrupt-Appellant,
Zalmen A. Dunn
225 Broadway
New York, New York 10007
766-9555

Of Counsel:

ELIAS MANN
MARTIN I. KLEIN

JACOB F. GOTTESMAN,
Attorney for Trustee-Appellee
Samuel A. Arutt
295 Madison Avenue
New York, New York 10017
683-2626



3

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INDEX

	PAGE
Relevant Docket Entries—Bankruptcy Docket	1a
Relevant Docket Entries—District Court	11a
Trustee's Remaining Specification 3(c)	15a
Memorandum Opinion and Order of Chief Judge Mishler dated May 24, 1973 remanding for further hearing with respect to Specification 3(c) of the Trustee's Objections to the Bankrupt's Discharge	16a
Opinion dated February 19, 1974 of Bankruptcy Judge Rudin sustaining on remand Specification 3(c) of the Trustee's Objections to the Bankrupt's Discharge	27a
Order of Bankruptcy Judge Rudin dated March 13, 1974 sustaining Specification 3(c) and denying the Bankrupt's Discharge	36a
Memorandum Decision of Chief Judge Mishler dated July 25, 1974 affirming the Bankruptcy Judge	38a
Adjourned hearing on Specifications of Objections to the Bankrupt's Discharge	39a
Adjourned hearing on Specifications of Objections to the Bankrupt's Discharge	48a
Adjourned hearing on Specifications of Objections to the Bankrupt's Discharge	64a
Adjourned hearing on Specifications of Objections to the Bankrupt's Discharge	74a
Trustee's Exhibit 8—Schedule of Liabilities	93a
Notice of Appeal to United States Court of Appeals	97a

JOINT APPENDIX

Relevant Docket Entries—Bankruptcy Docket

DATE	PROCEEDINGS
* * *	
3/3/67	Petition, Schedules & Statement of Affairs filed. Referred to: William J. Rudin, Ref. (Orig. & copy sent to Ref.-3/3/67) *rec 3/6/67

* * *



Relevant Docket Entries—Bankruptcy Docket

* * *

3/29/67 fm held - bkpt examined - creds nominate trustee-
adj. to April 26 at 11

3/29/67 signed order approving appt of tr & sent to tr notice-
ex prop form- int rep form - (schedules taken by Mr. Gottesman)

4/4/67 rec bond of tr (2 cc tr) (3 cc to Mr. Gottesman, (7)

4/17/67 rec. petition and affidavit and signed order for retention
of attorney for tr. (Jacob F. Gottesman) lcc ret.

* * *

Relevant Docket Entries--Bankruptcy Docket

DATE	PROCEEDINGS
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* * *

12/12/67	rec trustee's objections to bankrupt's discharge
1/3/68	rec objs to discharge (\$10. check to clks off) (26)
2/28/68	Mailed (6) objs to discharge notices (April 10 - 10:30)& filed mail certificate (27)

* * *

5/13/68	rec notice of motion for order dismissing spec of obj dated Dec. 2, 1967 (41)
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Relevant Docket Entries—Bankruptcy Docket

21/68	Signed decision and order. Mailed (2) copies of 6 pg. decision to Levin & Weintraub & Kimmelman and Perkiss re Balame Corp. Settle order. (42)
5/29/68	signed order dismissing specs of objs to discharge (copy ret) (Shore etc.) (43)
6/18/68	Signed decision & order. Mailed (3) copies of 8 pg. dec. to Atty. for Bankrupt, Atty. for Trustee & Levy, Levy & Ruback. re order dismissing specs. of objs. (44)
6/27/68	rec pet for review dated 6/18/68 \$10. clk off. (45)
6/28/68	rec a trustee amended objs to discharge with affidavit of service. (46)
7/3/68	filed certificate on Review re order dated June 18, 1968 re order dism objs to dis. & sent to Clerks Office papers # 45-44 -41-40-25-46 and briefs of both parties (July 19, 10AM Brooklyn) and filed certificate of mailing (copies to Levin & Weintraub-Samuel A. Arutt & Jacob F. Gottesman)
* 7/30/68	xxxx rec papers back from clks off. #6, 45, 41, 40, 25, 46, 3, 4, 5m
8/21/68	sent papers as listed above back to Clerks office at request of Clerk's Office including #6 our # 47 now
** 7/30/68	rec original order affirming Ref Rudin on Certificate on Review (#6) (47)

* * *

#5/15/68	adj specs of objs - adj to June 24 at 11:30 motion re dismissal specs of objs -because signed by atty for tr - submitted
*6/24/68	adj specs of objs to disch- adj to 7/17 at 2
*7/17/68	adj specs of objs to disch -adj to 8/28 at 2
*8/28/68	adj specs of objs to discharge-adj to 9/11 at 10:30
10/30/68	adj specs of objs to discharge - adj to 11/27 at 10:30
11/12/68	rec trustee's second interim report (43)
11/27/68	adj specs pf objs to discharge - adj to 12/4 at 11 am
12/4/68	adj specs objs to discharge - adj to 12/18 at 2 PM
12/18/68	adj specs of objs to discharge - adj to 1/22 at 2

Relevant Docket Entries—Bankruptcy Docket

DATE	PROCEEDINGS	DOCKET NUMBER
1/22/69	adj specs of objs - adj to 2/7 at 10:30 * * *	
2/7/69	adj specs of objs - adj to March 21 at 10:30 am for trial * * *	
3/21/69	adj specs. of objs; (trial);- proceeded, with hearing on specifications. Trustee offered evidence in support of specifications "First a and c" of Dunn specifications "First a and b" of Levy specifications. Testimony taken of Roger Wernow of C.I.T. Corp. (District Credit Manager) and David Storm, Asst. Cashier of Firsg National City Bank, Zalmen A. Dunn & Murry Levy & marked submitted for decition. * * *	
4/14/69	rec test re hgr on specs of objs to the bkpts discharges 3/21/69	(56)
6/16/69	Mailed (2) 17pgs of decision on objs to discharge to XX atty for tr and atty for bankrupto. (dismissing spec	(57)
7/3/69	signed order dismissing specifications 1 (b) and 1 (c) and hearing to proceed as to balance of specifications.	(58)
7/14/69	rec pet for review by trustee Re clp 77 1213 dated 7/9/69 \$10. clk off.	(59)
7/15/69	rec papers back from clk off. #47,45, 44, 41, 40,25,46	
7/25/69	Certificate on Review sent to Brooklyn re order of Ref 7/3/69 with papers #59-58-46-57- scheds of Bkpt- Scheds of Mid-Island Dental Supply- Exhibits as listed and 2 Briefs as listed- (August 15, 10:00 A.M.) and filed certificate of mailing - copies to tr-atty for tr and atty for bkpt.	

Relevant Docket Entries—Bankruptcy Docket

DATE	PROCEEDINGS
9/18/69	rec memorandum of decision and order signed by U.S.J.D. Mishler dated September 16, 1969 affirming Referee's order of July 3, 1969 (60)
3/16/70	trial re objs to discharge reinstated and set for April 15 at 11:30AM
4/15/70	Trial objs to discharge; (reinstated) adj to May 13 at 11 am
5/13/70	adj trial objs to discharge (reinstated) adj to June 24 at 11 am.
6/8/70	rec memorandum of decision and order signed by U.S. D. J Jacob Mishler affirming Referee's order of July 3, 1969 re -objs to discharge. (61)
6/8/70	rec from Bklyn office papers #12, 59, 58, 46, 57, Briefs & exhibits (Mid-Island Dental Schedules)
6/24/70	adj trial objs to discharge (reinstated) (trial); adj to July 15 at 11 am
7/15/70	adj trial objs to discharge (reinstated); adj to August 12th at 11 am
8/12/70	adj trial objs to discharge; (reinstated) adj to Aug. 19 at 2 PM
8/19/70	adj xxxxxxx trial objs to discharge; (reinstated) adj to Sept. 2 at 2 PM.
9/2/70	adj trial objs to discharge (reinstated); adj to October 7 at 2 PM.
9/23/70	rec test - adj hrg spec of objs to discharge - Sept. 2, 1970 (62)
10/7/70	Adj trial objs to discharge. (reinstated); adj to November 18th at 2 PM.
11/18/70	Adj trial objs to discharge (reinstated); adj. to December 2nd at 2 PM
12/2/70	Adj trial objs to discharge (reinstated); adj to December 23rd at 10:30 am.
12/23/70	Adj trial objs to discharge (reinstated); Adj to January 20, 1971 at 2 PM
ix20xixxx	Indemnity hearing, hearing, hail xaxadixtaxFebruary ixthxatxi@r30am.
1/20/71	Adj trial objs to discharge (reinstated); Adj to February 17th at 11:30 am.
2/17/71	adj trial objs to discharge (reinstated)-adj to 3/24 at 11:30
3/24/71	Adj trial objs to discharge (reinstated) adj to April 21st at 11:30 am.

Relevant Docket Entries—Bankruptcy Docket

DATE	PROCEEDINGS
4/12/71	rec pet and notice of motion-why an order should not be made and entered herein granting tr summary judgment that predicated on Ref decision, Judge Jacob Mishlers decision etc (April 21 at 11:30AM) (63)
4/21/71	Motion re order re granting tr summary judgment re Referee's decision. Withdrawn. Adj trial objs to discharge (reinstated). Adj to May 12th at 11:30 am.
4.21/71	received trustees memorandum for summary judgement re trustee's objs to dis (64)
4/21/71	rec answer from attys for bkpt re obj to dis (65)
4/21/71	recd memo of law in support of bkpts answer (66)
5/12/71	Adj trial objs to discharge (reinstated) Adj to June 2nd at 11:30 am.
6/2/71	adj trial(reinstated)objs to dis adj to June 21 at 11:50 by Referee
6/18/71	rec test re adj hrg os specs of objs to the bkpts dis; hrg on motion why order should not be made granting tr summary judgment predicated on Referee's Decision etc 4/21/71 (67)
6/21/71	Adj trial objs to discharge (reinstated); Hearing held on pre-trial and spec. d 1, 2, 4 & 5 stricken. 5th spec. stricken. Trial on spec. to be held on July 28th at 11 am.
7/1/71	signed order dismissing specifications (68) (1(a), 2, 3(a), 3(b), 3(f), 4(d) (1), copy ret'd 4(d)(2), 4(d)(5) and 5.
7/12/71	rec test re adj pre-trial hrg on objs to the bkpts discharge 6/21/71 (69)
7/28/71	Adj trial objs to discharge (reinstated) (Trial on specs). Adj to October 4th at 11 am.
10/4/71	Adj trial objections to discharge reinstated- trial on Specs adj to Oct. 18 at 11 A M
10/18/71	Adj trial objs to discharge (reinstated) trial on specs; Adj to November 15th at 11 am.
11/15/71	Adj trial objs to discharge (reinstated) Trial on specs.; Hearing proceeded with examination of Zalmen A. Dunn as to Spec. 4a and adj to December 28th at 10:30 am.
12/3/71	rec test re adj hrg on spec of objections to the bkpt's discharge 11/15/71 (70)
12/28/71	Adj trial objs to discharge (reinstated) Trial on specifications; Hearing continued with testimony of bankrupt and trustee rested & adj to January 31st at 10:30 am.

Relevant Docket Entries—Bankruptcy Docket

1/10/72	rec test re adj hrg on specs of objs to the bkpts' discharge 12/28/71 (71)
1/31/72	Adj trial objs to discharge (reinstated) trial on specifications. Adj to February 14th at 10:30 am.
2/14/72	Adj trial objs to discharge (reinstated) trial on specifications; Adj to March 13th at 10:30 am.
3/13/72	Adj trial objs to discharge (reinstated) trial on specifications; adj to April 26th at 10:30 am.
4/26/72	Adj trial objs to discharge (reinstated) trial on specifications. Adj to May 17th at 11 am.
5/17/72	Adj trial objs to discharge (reinstated) trial on specifications; Adj to May 24th at 11 am.
5/22/72	rec test re adj hrg on specs of objs to the bkpts discharge 4/26/72 (72)
5/24/72	adj trial objs to discharge (reinstated) trial on specifications adj to June 21, at 10:30AM
6/21/72	Adj trial objs to discharge (reinstated) Trial on specification; Proceeded with obj to discharge with testimony of bankrupt & hearing adj to August 2nd at 2 PM
7/12/72	rec test re adj hrg on specs of objs to the bkpts discharge 6/21/72 (73)
*7/2/72	Adj trial objs to discharge (reinstated) trial on specifications.; Hearing continued with testimony of bankrupt and both sides rest. Briefs by Sept. 25th.
8/30/72	rec test re adj hrg on specs of objs to the bkpts discharge 8/2/72 (74)
9/26/72	Recd from Atty for Bankrupt a memorandum re Bankrupt's Post Trial (75)
*9/18/72	rec trustee's memorandum in support of objections to discharge of Zalmen A. Dunn (76)
12/7/72	Signed decision. Mailed (3) copies of 19 page decision re specifications of objs to the discharge of the bankrupt. Copies to Atty for Bankrupt, Trustee and Atty for Trustee. A discharge will be denied bankrupt. Settle order on Notice. (77)
12/18/72	signed order re specifications of objections to discharge Specifications 3c, 3d and 4th a are hereby sustained and the bankrupt denied a discharge & specs Fourth c, Fourth d 3 and 4 are dismissed (78)
12/29/72	rec petition for review from Levin & Weintraub attys for bkpt \$10.00 clk off (79)

Relevant Docket Entries—Bankruptcy Docket

DATE	PROCEEDINGS
1/16/73	Signed certificate on review re order of Referee December 18, 1972 re discharge-and sent the following papers to Clerks Office- # 79-78-46-77-62-69-70-71-73-74-1- package of claims # 1-53-(exhibits as noted on certificate-) # 57 -61-75-76- and # 25 from the Mid-Island Dental Supply Corp thru Clerks Office(as case was closed 67B124) and filed certificate of mailing- copies to Levin & Weintraub and Jacob Gottesman - copies of claim register and docket sheet sent with certificate. (80)
5/25/73	& order recd copy of decision/rendered by Judge Mishler May 24, 1973 reversed Ref dec re Specs 3D-& 4a and said specifications are dismissed- matter remanded for further hearings re 3(c) (81)
5/24/73	received the following papers from Clerk's office: # 80-79-78-46-77-62-69-70-71-73-74- 1-claims 1-53-exhibits as noted on certificate 57-61-75-76 also photocopy of claims register and docket sheets
6/20/73	rec notice of appeal from atty for tr, re order of Ref dated December 18, 1972-re specifications (82)
2/19/74	Signed Decision re specifications of Objections to Discharge re books & records. Mailed 2 photocopies of 9 page decision - Mr. Jacob F. Gottesman, Atty. for Trustee and Levin & Weintraub-Atty. for Bkpt.Judge finds Tr. to have sustained specification 3c. Submit order on notice. (83)
3/13/74	signed order that specification 3(c) is hereby sustained and bkpt denied a discharge copy ret'd (84)
3/20/74	rec notice of appeal from Levin & Weintraub attys for defendant-re objs to bkpt discharge and denying bkpt a discharge in bankruptcy \$10.00 clk off (85) (copy of notice of appeal sent to Samuel Aruff, Esq c/o Jacob J. Gottesman Esq)
5/9/74	recd designation of contents for inclusion in record on appeal and statement of issues to be presented on appeal from atty for bankrupt (86)
5/13/74	recd plaintiff's designation of contents for inclusion in record of appeal by atty for plaintiff (8)
6/12/74	Mailed to Clerks Office record on appeal with the following papers:85-84-83-81-70-71-73-74- with exhibits as noted on transmittal sheet -also photocopy of docket sheet and filed certificate of mailing copies of transmittal sent to Elias Mann and Jacob Gottesman (88)
7/26/74	recd photocopy of memorandum of Decision of Judge Mishler affirming theBJudge March13,1974 (89)
7/26/74	received the following papers back from Clerk's office- 88-87-86-85-84-83-81-70-71-73-74 with exhibits
8/26/74	received notice of appeal to Court of Appeals from Clerks Office (90)

Relevant Docket Entries—Bankruptcy Docket

DATE	PROCEEDINGS
8/28/74	<p>sent to Clerks office the following papers to be submitted to the Court of Appeals re order of Judge Mishler - July 25, 1974 # 90-89-88-87-8685-84-83-81-70-71-73-74 and all exhibits as listed on original appeal plus copy of docket sheet and filed certificate of mailing Copy to (91 (Levin & Weintraub & Jacob F. Gottesman)</p>

Relevant Docket Entries—District Court

DATE	PROCEEDINGS
6/8/67	Petition, Schedules & Statement of Affairs filed. Return to: William F. Levin, Esq. (Orig. & Copy) 7/1/67
7/5/68	Referee's Certificate on Petition to review order dated June 18, 1968 filed. Returnable July 19th, 1968 at 10:00 A.M. (2)
7/10/68	Bankrupt's Memorandum of Law in support of Petition for Review of the Referee's order denying Motion to Dismiss Specifications filed by Messrs Levin & Weintraub. (3)
7/19/68	Trustee's Memorandum to confirm Referee's Report filed by Jacob F. Gottesman, Atty, for Trustee. (4)

Relevant Docket Entries—District Court

- 7/19/68 Affidavit of Jacob F. Gotsman filed. (5)
- 7/19/68 Before Zavatt, Ch. J. - Hearing on Trustee's objections to bankrupt's discharge, etc. Case called. Hearing held and concluded. Order of Referee Rudin is affirmed.
- 7/25/68 By Zavatt, Ch. J. - Order filed that order of William J. Rudin, Referee, dated June 18, 1968 be and the same hereby is in all respects affirmed. (6)
Review granted to the appellant.
- 8/20/68 Notice of Appeal filed. (Levin & Weintraub, Esqs. atty. for Bankrupt). (7)
- * * *
- 3/20/69 Certified copy of Order from U.S.C.C.A. dated 11/21/68 filed affirming order of this Court with costs to be taxed against the Appellant. (11)
- * * *
- 7/28/69 Referee's Certificate on Review of order dated July 3, 1969 filed. Returnable August 15th, 1969, at 10:00 A.M. (12)
- 8/12/69 Bankrupt's Memorandum of Law in Opposition to Petition for Review Dismissing Specifications filed. (Review returnable Aug. 15, 1969. (13)
- 8/15/69 Bankrupt's Supplemental Brief in opposition filed. (14)
- 8/15/69 Trustee's Memorandum of Law- Certificate of Review filed. (15)
- 8/15/69 Before Mishler, Ch.J.- Hearing on the petition to review an order dated July 3rd, 1969, etc. Case called. Motion argued. Decision Reserved.
- 9/16/69 By Mishler, Ch.J.- Memorandum of decision and Order filed. Petition dismissed. The Referee's order of July 3, 1969 is affirmed, and it is SO ORDERED. (seememo) (16)
(copies mailed to each Referee.) *H.C.*

Relevant Docket Entries—District Court

DATE	PROCEEDINGS
9/29/69	Notice of Appeal filed by Jacob F. Gottesman, Attorney for Trustee-Appellant. (from order by Mishler, Ch.J. dated Sept. 16, 1969). <i>10/1/69</i>
5/6/70	Certified copy of order from U.S.C.C.A. dated Feb. 20, 1970, together with Statement of Costs filed affirming order of this Court with costs to be taxed against the appellant. (Samuel A. Arutt, Trustee-Appellant)
1/17/73	Referee's Certificate on Review of order dated December 18, 1972 filed. ASSIGNED TO: TRAVIA, J. (19)
1/19/73	By Mishler, Ch. J. - Memorandum dated Jan. 18, 1973 filed assigning Review filed 1/17/73 to Judge Mishler. (With the consent of Judge Travia the proceeding is assigned to Judge Mishler, as review is related to a prior review determined by a memorandum of decision dated Sept. 16, 1969, by Judge Mishler) (20)
4/27/73	By Mishler, Ch. J. - Hearing on Review of Referee's order. Case Called - Motion Argued - Decision reserved. (21)
5/24/73	By Mishler, Ch. J. - Memorandum of Decision and Order filed. There being no substantial evidence to support specifications 3(d) and 4(a), the referee's order of December 18, 1972, is reversed as to specifications 3(d) and 4(a), and said specifications are dismissed. The matter is remanded for further hearings and/or findings relating to specification 3(c) consistent with this decision. (Copies mailed to Referees) (22)
6/19/73	Notice of Appeal filed by Jacob F. Gottesman, Attorney for Trustee. (Order of Judge Mishler dated 5/24/73) (copies of Notice of Appeal mailed to Levin & Weintraub, Attys. for Bankrupt and Ref. William J. Rudin) (23)
6/17/74	Notice of Appeal filed by Levin & Weintraub, Attorneys for Bankrupt. (Order of Bank. Judge Rudin dated Feb. 19, 1974 (Assigned to Mishler, Ch. J.) (24)
6/20/74	Bankrupt's Memorandum of Law filed. (Levin & Weintraub) (25)

Relevant Docket Entries—District Court

DATE	PROCEEDINGS
7/25/74	<p>Trustee's Memorandum of Law filed. (Jacob F. Gotterman, Esq.) (26)</p> <p>By Mishler, Ch. J. - Memorandum of Decision filed. The order dated 3/13/74 denying the bankrupt his discharge in bankruptcy is affirmed. (See memo.)</p> <p><i>Exhibit attached to 7/25/74 - HC</i> (27)</p>
8/5/74	<p>Notice of motion and application for rehearing, ret. Aug. 23, 1974 filed (Motion sent to Ch. J. Mishler). (28)</p>
8/8/74	<p>Answer to Application. (Opposition Affidavit) filed. (Jacob F. Gottesman, Atty. for trustee) (29)</p>
8/26/74	<p>Notice of Appeal filed. (Levin & Weintraub, Esqs.) from order of Mishler, Ch. J. dated 7/25/74. (copy sent to U.S.C.C.A.) (30)</p>

Trustee's Remaining Specification
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

[TITLE OMITTED]

To the Hon. William J. Rudin, Referee in Bankruptcy:

SAMUEL A. ARUTT, of 185 Madison Avenue, New York, N. Y., in the Eastern District of New York, trustee of the estate of the above named bankrupt having examined into the acts and conduct of said bankrupt and being satisfied that probable grounds exist for the denial of the discharge of said bankrupt and that the public interest so warrants does hereby oppose the granting to the bankrupt herein of discharge from his debts, and for the grounds of such opposition does file the following specifications:

Third Specification:

Said bankrupt has, with intent to conceal his financial condition, failed to keep books of account or records, from which such condition might be ascertained:

c. That Mid-Island Dental Supply Corp. is indebted to him in the sum of \$123,230.72 i.e. Schedule B-3 whereas in truth and in fact the bankrupt has stated in writing on October 31, 1966 that Mid-Island Dental Supply Corp. was indebted to him for \$83,049.79 and in a written audit of his records prepared by an accountant on his behalf and delivered to the trustee his auditor therein specified that the indebtedness from Mid-Island Dental Supply Corp. was \$51,333.87.

WHEREFORE, objection is made to the granting of such application for discharge.

Dated, December 2, 1967.

JACOB F. GOTTESMAN
Attorney for Trustee
 Office & P. O. Address
 295 Madison Avenue
 New York, N. Y. 10017

Memorandum Opinion and Order of Chief Judge
Mishler dated May 24, 1973 remanding for further
hearing with respect to Specification 3(c) of the
Trustee's Objections to the Bankrupt's Discharge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter

: 67-B-256

-of-

: May 24, 1973

ZALMEN A. DUNN,

: Memorandum of Deci-
sion and Order

Bankrupt.

:
----- x

The bankrupt, Zalmen A. Dunn, petitions this court for review of an order of Referee William J. Rudin, dated December 18, 1972, sustaining specifications 3(c), 3(d) and 4(a) of the trustee's specifications of objection to the discharge of the bankrupt and denying a discharge. This court previously affirmed the referee's dismissal of specifications 1(b) and 1(c). See In re Dunn, 67-B-256 (E.D.N.Y., Sept. 16, 1969), aff'd 422 F.2d 501 (2d Cir. 1970). The remaining specifications have all been either withdrawn by the trustee or dismissed by the referee.

Specification 4(a) charges that "the bankrupt herein knowingly, and fraudulently made a false oath in relation to said proceedings in bankruptcy" in that he listed non-existent securities in Schedule A-2 of his petition in bankruptcy. The transactions leading up to this "false oath" were fully dis-

*Memorandum Opinion and Order of Chief Judge Mishler
dated May 24, 1973 remanding for further hearing
with respect to Specification 3(c) of the Trustee's
Objections to the Bankrupt's Discharge*

cussed in this court's memorandum of decision herein dated
September 16, 1969:

"The bankrupt, Zalmen A. Dunn, was a duly licensed and practicing dentist with an office in Seaford, Long Island. [Murry] Levy was the president, a stockholder and an executive of Mid-Island Dental Supply Corp. (Mid-Island), a corporation engaged in the business of selling dental equipment and supplies to doctors and dentists. Dunn entered into an agreement with either Levy or Mid-Island which provided for the payment to Dunn of 10% of the profits of Mid-Island in return for his services in inducing or encouraging people to invest in the corporation.

In May of 1963, Mid-Island was in need of funds. In order to remedy this situation, Dunn and Levy entered into a fraudulent scheme. Mid-Island issued invoices to Dunn which purported to evidence a sale of dental equipment at a price of \$10,002.00. Dunn, in turn, executed a promissory note and chattel mortgage covering the equipment in favor of the First National City Bank [FNCB]. In return for these documents, the bank issued a check to Mid-Island in the amount of \$3,498.00. The sale was fictitious. The equipment described in the documents was non-existent. A similar fraud was perpetrated on C.I.T. Corporation. In September of 1964, Mid-Island received \$10,535.50 from C.I.T. in exchange for the assignment by Mid-Island of a conditional sales contract executed by Dunn. Once again, the contract was part of a fictitious sale of dental equipment."

Schedule A of the form bankruptcy petition is a statement of all debts of the petitioning debtor. Schedule A-2 is entitled "Creditors holding securities." The last two items listed on the bankrupt's Schedule A-2 were as follows:

*Memorandum Opinion and Order of Chief Judge Mishler
dated May 24, 1973 remanding for further hearing
with respect to Specification 3(c) of the Trustee's
Objections to the Bankrupt's Discharge*

Names of creditors. ***	Description of securities ***	Value of Securities ***	Amount due of claimed
***	***	\$***	\$***
C.I.T. Corporation 575 Madison Avenue New York, N. Y.	Holds chattel mortgage on dental equip- ment.	1,000.00	8,445.99
First National Bank 42nd & Madison Avenues New York, N. Y.	Chattel Mort- gage on equip- ment	4,376.32	4,376.32

When the bankrupt signed the petition on March 2, 1967, he swore to the truth of all statements contained therein. He knowingly made a false oath in that he listed \$5,376.32 worth of non-existent securities for his loans from C.I.T. and FNCB.

The basis for the trustee's objection to discharge is section 14c(1) of the Bankruptcy Act, 11 U.S.C. § 32(c)(1), which provides for the denial of a discharge where the bankrupt has "committed an offense punishable by imprisonment as provided under section 152 of Title 18." The second paragraph of section 152 provides that "[w]hoever knowingly and fraudulently makes a false oath or account in or in relation to any bankruptcy proceeding" has committed such an offense. Thus, specification 4(a) cannot be sustained unless the bankrupt "knowingly and fraudulently" made the false oath in schedule A-2. The referee concluded that the bankrupt's false oath was "knowingly

*Memorandum Opinion and Order of Chief Judge Mishler
dated May 24, 1973 remanding for further hearing
with respect to Specification 3(c) of the Trustee's
Objections to the Bankrupt's Discharge*

and fraudulently" made. The referee's findings of fact must be accepted unless "clearly erroneous." General Order in Bankruptcy 47. However, as to a finding of fraudulent intent in making a false oath, "[t]he district judge [is] free to draw his own conclusion from the facts as found by the referee." Bakar v. Trachman, 244 F.2d 18, 20 (2d Cir.1937); cf. In re Sandow, 151 F.2d 807, 809 (2d Cir. 1945).

Before drawing any conclusions, we must first deal with the threshold question of whether fraudulent intent is a requisite element of a false oath under 18 U.S.C. § 152. Early cases construing section 29 of the Bankruptcy Act (which was the predecessor statute to 18 U.S.C. § 152) answered this question in the negative, despite the clear language of the statute. Section 29b of the Bankruptcy Act, ch. 541, § 29b, 30 Stat. 550, 554, provided, in relevant part, as follows:

A person shall be punished, by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently (1) concealed . . . property belonging to his estate in bankruptcy; or (2) made a false oath or account in, or in relation to, any proceeding in bankruptcy. . . ."

The relevant portions of section 29b remained virtually unchanged from its enactment in 1898 until its repeal and replacement by 18 U.S.C. § 152 in 1948. The court in Troeder v.

*Memorandum Opinion and Order of Chief Judge Mishler
dated May 24, 1973 remanding for further hearing
with respect to Specification 3(c) of the Trustee's
Objections to the Bankrupt's Discharge*

Lorsch, 150 F.710 (1st Cir. 1906), was apparently confused by the phrasing of section 29b and neglected to apply the adverb "fraudulently" to subsection (2) as well as subsection (1).

In discussing the first two offenses in section 29b, the Troeder court referred to the statute as follows:

"First, 'having knowingly and fraudulently concealed . . . any of the property belonging to his estate in bankruptcy'; and, second, having 'made a false oath or account in, or in relation to, any proceeding in bankruptcy.'" 150 F. at 711.

The court carried forth its error in interpreting the statute:

"The alleged concealment must have been made knowingly and fraudulently; and, according to the practical construction of the statute, it is settled that the alleged false oath must contain all the elements involved in perjury at common law, namely, an intentional untruth in a matter material to an issue which is itself material." 150 F. at 713.

Unfortunately, this erroneous construction of section 29b was quoted and further misapplied by the Court of Appeals for the Second Circuit in a 1927 case:

"The words of the statute requiring that the testimony be given 'knowingly and fraudulently' mean no more than 'an intentional untruth in a matter material to the issue which is itself material.'" In re Slocum, 22 F.2d 282, 285 (2d Cir. 1927).

In 1944 the Second Circuit still refused to consider the question of whether a false oath had been made fraudulently, "bow[ing] to the precedents which, in practical effect, [had] read the word 'fraudulently' out of the statute by the use of

*Memorandum Opinion and Order of Chief Judge Mishler
dated May 24, 1973 remanding for further hearing
with respect to Specification 3(c) of the Trustee's
Objections to the Bankrupt's Discharge*

the phrase 'an intentional untruth [etc.]'." In re Steinberg, 143 F.2d 942, 943 (2d Cir. 1944). One year later the court still adhered to the "settled doctrine that, if a bankrupt consciously swears to what he knows to be untrue, it makes no difference that he does not mean by so doing to injure his creditors." Morris Plan Indus. Bank v. Finn, 149 F.2d 591, 592 (2d Cir. 1945).

What the court meant by its "settled doctrine" is questionable; only three days after the Morris Plan decision was handed down, the same panel of the Second Circuit (Judges Clark, A. Hand and L. Hand) decided Thompson v. Eck, 149 F.2d 631 (2d Cir. 1945), which indicates that a finding of actual fraudulent intent is necessary to deny a discharge. In Thompson the court said that proof that the bankrupt made out false schedules on his attorney's advice "is ordinarily enough to show that the necessary [fraudulent] intent is lacking." 149 F.2d at 633 (emphasis added). Finally, in 1946 the same panel tried to explain previous opinions, including Troeder and the Second Circuit's holdings in Morris Plan, Steinberg, and Slocum, which had been characterized in Steinberg as reading "fraudulently" out of the statute:

*Memorandum Opinion and Order of Chief Judge Mishler
dated May 24, 1973 remanding for further hearing
with respect to Specification 3(c) of the Trustee's
Objections to the Bankrupt's Discharge*

"The criticism, however, would seem to be one of verbiage rather than reality, for the utterance of 'an intentional untruth [etc.]' is no more than a characterization of what is sufficient to justify an inference of an intent to defraud the bankrupt's creditors. If a bankrupt knowingly swears falsely in a matter material to the issue, it is hard to see why he has not acted 'knowingly and fraudulently'...." Tancer v. Wales, 156 F.2d 627, 628 (2d Cir. 1946).

In 1948 the criminal sanction provisions of the Bankruptcy Act were transferred from section 29b to 13 U.S.C. § 152. The concomitant rephrasing of the statute makes it much clearer that "knowingly and fraudulently" modifies "makes a false oath or account." More recent Second Circuit cases seem to concede that fraudulent intent is requisite for a violation of section 152. See In re Melnick, 360 F.2d 913, 920 (2d Cir. 1966) ("[L]ack of value in transactions does tend to negative fraudulent intent"); In re Tabibian, 239 F.2d 793, 797 (2d Cir. 1961) ("To warrant denial of a discharge . . . the misstatement must have been fraudulent. . . ."). In contrast to the Second Circuit, the Third Circuit has consistently interpreted the statute as requiring "actual fraudulent intent." See United States v. Mathies, 350 F.2d 963 (3d Cir. 1965); In re Ploch, 235 F.2d 903 (3d Cir. 1956); In re Topper, 229 F.2d 691 (3d Cir. 1956); In re Wolf, 165 F.2d 707 (3d Cir. 1948) (decided prior to repeal of section 29b). But see In re Kaufhold, 256 F.2d 181, 185 (3d Cir. 1958) ("[T]he making of a false oath

*Memorandum Opinion and Order of Chief Judge Mishler
dated May 24, 1973 remanding for further hearing
with respect to Specification 3(c) of the Trustee's
Objections to the Bankrupt's Discharge*

is sufficient to justify an inference of an intent to defraud creditors. . . .").

In light of the above analysis, we hold that fraudulent intent is a requisite element of a false oath under 13 U.S.C. § 152. From the facts herein we conclude that the bankrupt did not have the necessary intent to defraud when he swore to the truth of Schedule A-2. The bankrupt did intentionally commit fraudulent acts in 1963 and 1964 when he obtained loans from FNCB and C.I.T. based on his misrepresentations as to the existence of the chattel securities. But when he filed his bankruptcy petition in 1967, the fraud had long since been accomplished, the damage had been done. Even if the bankrupt had frankly admitted the non-existence of the securities and listed FNCB and C.I.T. as unsecured creditors, it would not have affected the distribution of the bankrupt's assets. Neither FNCB and C.I.T. nor the unsecured creditors listed in the bankrupt's schedules would have gained or lost a cent had they been apprised of the true facts on May 2, 1967. While the false oath in Schedule A-2 may have delayed the discovery of the frauds, it was too late to have had any prejudicial effect on the ability of the defrauded creditors to recover their losses from the bankrupt. The bankrupt's intent in listing the securities on Schedule A-2 was not to defraud, but rather to

*Memorandum Opinion and Order of Chief Judge Mishler
dated May 24, 1973 remanding for further hearing
with respect to Specification 3(c) of the Trustee's
Objections to the Bankrupt's Discharge*

be consistent with the misrepresentations that had been the bases of completed frauds. Since the requisite fraudulent intent was lacking, the bankrupt did not commit an offense under 18 U.S.C. § 152 and specification 4(a) must be dismissed.

In specifications 3(c) and 3(d) the trustee objects to a discharge on the grounds provided in section 14c(2) of the Bankruptcy Act, 11 U.S.C. § 32(c)(2), i.e., that the bankrupt "failed to keep or preserve books of account or records, from which his financial condition and business transactions might be ascertained. . . ." Specification 3(c) is founded on the large discrepancies between the amount the bankrupt lists as an unliquidated claim against Mid-Island in Schedule B-3(c) (\$123,230.72), the amount the bankrupt stated was owed by Mid-Island in a letter dated October 31, 1966 (\$33,049.79), and the amount determined to be owed in an audit made in the latter part of 1966 (\$51,333.37). At the hearing the trustee showed additional discrepancies in the amount the bankrupt stated was owed in a July 13, 1965, financial statement (\$67,730.00), and the amount the bankrupt deducted as a bad debt on his 1966 Federal income tax return, which was filed in late 1967 (\$67,593.79).

Specification 3(d) is founded on the relatively small discrepancy between the amount the bankrupt lists as a liability

*Memorandum Opinion and Order of Chief Judge Mishler
dated May 24, 1973 remanding for further hearing
with respect to Specification 3(c) of the Trustee's
Objections to the Bankrupt's Discharge*

to the Estate of Jacob Dunn in Schedule A-4 (\$35,000.00) and the amount an audit of his records established as being the correct indebtedness (\$32,000.00). The bankrupt insists that \$35,000.00 is the correct figure, basing this on his independent recollection of the total assets contained in his father's estate. The discrepancy of \$3,000.00 is approximately one-half of one percent of the bankrupt's total liabilities. Section 14c(2) does not require absolute accuracy. "The requirement is imposed to enable creditors, with the assistance of proper books and records, to ascertain the true status of the bankrupt's affairs and to test the completeness of the disclosure requisite to a discharge." 1A Collier on Bankruptcy ¶14.30, at 1354 (14th ed. 1972). Furthermore, it is very possible that the \$32,000.00 figure reflected in the bankrupt's records is completely accurate and that the bankrupt's personal recollection is in error. At any rate, the \$3,000.00 discrepancy could not have materially impeded the creditors in ascertaining the bankrupt's "financial condition and business transactions." Specification 3(d) is therefore dismissed.

|| Specification 3(c) cannot be dealt with so easily; it involves relatively large discrepancies which certainly would be material. However, the standard for the denial of a

*Memorandum Opinion and Order of Chief Judge Mishler
dated May 24, 1973 remanding for further hearing
with respect to Specification 3(c) of the Trustee's
Objections to the Bankrupt's Discharge*

discharge under section 14c(2) is not whether the figures the bankrupt lists in his schedules are inconsistent with those figures he claimed as assets or liabilities at other times. Rather, the trustee must show either that bankrupt's records are indecipherable or unintelligible, or that the records present a misleading picture of the true status of the bankrupt's financial affairs. To sustain specification 3(c), there must be a finding that the actual amount of the bankrupt's claim against Mid-Island cannot be substantially ascertained by reference to his records. The referee has made no such finding.

There being no substantial evidence to support specifications 3(d) and 4(a), the referee's order of December 13, 1972, is reversed as to specifications 3(d) and 4(a), and said specifications are dismissed. The matter is remanded for further hearings and/or findings relating to specification 3(c) consistent with this decision.

SO ORDERED.

s/ Jacob Mishler
U. S. D. J.

**Opinion dated February 19, 1974 of Bankruptcy
Judge Rudin sustaining on remand Specification 3(c)
of the Trustee's Objections to the Bankrupt's Discharge**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

IN THE MATTER OF

ZALMEN A. DUNN

BANKRUPT

-----x

Decision on
Specifications of
Objections to
Discharge

Books and Records
67 B 256

The trustee filed specifications of objections to the discharge of the bankrupt. At the request of the parties, the hearings proceeded with specifications 1(b) and 1(c). These specifications were determined in favor of the bankrupt. On review, the order of the Referee was affirmed, and on appeal to the Court of Appeals, the order of the District Court was affirmed in a decision reported in 422 F. 2d, 501(1970).

Thereafter an order was made dismissing specification 1(a), specifications 2, 3(a), 3(b), 3(f), 4(d)(1), (2) and 5. The parties then proceeded to offer their proofs as to specifications third (c) and (d) and fourth (a) and (c).

In an opinion dated December 7, 1972, the Referee sustained specifications third(c) and (d) and dismissed specifications fourth and its subdivisions. A petition to review the order entered thereon was filed by the bankrupt and in an opinion dated May 24, 1973, District Judge Hon. Jacob Mishler reversed the Referee's order as to specifications 3(d) and 4(a) and dismissed them and remanded the matter for further hearings and/or findings

*Opinion dated February 19, 1974 of Bankruptcy Judge
Rudin sustaining on remand Specification 3(c) of the
Trustee's Objection to the Bankrupt's Discharge*

relating to specification 3(c) consistent with his decision.

The parties after much deliberation, decided to have the Referee make new findings as to specifications 3(c) on the basis of the existing record and waived new hearings. Specification 3(c) states:-

" That Mid-Island Dental Supply Corp., is indebted to him in the sum of \$123,230.72, i. e. Schedule B-3; whereas in truth and in fact the bankrupt has stated in writing on October 31, 1966, that Mid-Island Dental Supply Corp., was indebted to him for \$83,049.79 and in a written audit of his records prepared by an accountant on his behalf and delivered to the trustee his auditor therein specified that the indebtedness from Mid-Island Dental Supply Corp. was \$51,333.87."

I make the following findings of fact, conclusions of law and memorandum:-

Findings of Fact

1. The bankrupt borrowed sums of moneys from C.I.T. Corporation, First National Bank and Industrial Credit Plan, Inc., which at the time of the filing of the petition herein amounted to \$8445.99, \$4376.32 and \$4331.94 respectively.
2. The indebtedness to the C.I.T. Corporation and First National City Bank was "secured" by non-existent assets.
3. The bankrupt stated that Mid-Island Dental Supply Corp. was indebted to him for moneys loaned to it from 1960 through 1966 represented by notes in the sum of \$123,230.72.
4. The bankrupt wrote a letter to the trustee under date

*Opinion dated February 19, 1974 of Bankruptcy Judge
Rudin sustaining on remand Specification 3(c) of the
Trustee's Objection to the Bankrupt's Discharge*

of October 31, 1966 stating he was owed the sum of \$83,049.79 by Mid-Island Dental Supply Corp.

5. The bankrupt's brother-in-law accountant audited his records and came up with the figure of \$51,333.87 owed the bankrupt by Mid-Island Dental Supply Corp.

Conclusions of Law

1. The bankrupt failed to keep or maintain records from which his financial condition could be ascertained.
2. An order will be made sustaining specification 3c.

Memorandum

Pursuant to an order made on April 24, 1973, relative to the "Bankruptcy Rules and Forms", the Supreme Court

"Ordered xxx 2. That the aforementioned Bankruptcy Rules and Official Bankruptcy Forms shall take effect on October 1, 1973, and shall be applicable to proceedings then pending, except to the extent that in the opinion of the Court their application in a particular proceeding then pending would not be feasible or would work injustice, in which event the former procedure applies."

Prior to the enactment of the aforementioned "Bankruptcy Rules", the burden of proof was decreed to be "That, if xxx the objector shall show to the satisfaction of the Court that there are reasonable grounds for believing that the bankrupt has committed any of the acts which, under this subdivision c, would prevent his discharge in bankruptcy, then the burden of proving that he has not committed any of such acts shall be upon the bankrupt" (Sec. 14c(7), Bankruptcy Act.)

*Opinion dated February 19, 1974 of Bankruptcy Judge
Rudin sustaining on remand Specification 3(c) of the
Trustee's Objection to the Bankrupt's Discharge*

The former rule as to the burden of proof in a contested discharge was that the objector must make a prima facie case, i.e., establish reasonable grounds for belief that there was fraud, etc., at which point the burden shifted to the bankrupt to satisfactorily explain the questioned transaction. *McMillen v. Todd*, 288 F.2d 139 (10th Cir. 1955); *In re Roberts*, 176 F.Supp 361 (M.D. Car. 1959); *In re Tabibian*, 289 F. 2d 793 (C.A. 2nd 1961).

Under the aforementioned "Bankruptcy Rules" Sec. 407, the rule is now stated: "At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving the facts essential to his objection."

It would therefore be proper and in the best interests of justice that the trustee be required to establish his case by a fair preponderance of the evidence in accordance with the present rule of "burden of proof" as set forth in Sec. 407 of the Bankruptcy Rules.

This memorandum concerns itself with specification 3(c) which states:-

"That Mid-Island Dental Supply Corp., is indebted to him in the sum of \$123,230.72; i.e., Schedule B-3; whereas in truth and in fact the bankrupt has stated in writing on October 31, 1966, that Mid-Island Dental Supply Corp., was indebted to him for \$83,049.79 and in a written audit of his records prepared by an accountant on his behalf and delivered to the trustee his auditor therein specified that the indebtedness from Mid-Island Dental Supply Corp., was \$51,333.87."

The bankrupt was engaged in conducting a dental

*Opinion dated February 19, 1974 of Bankruptcy Judge
Rudin sustaining on remand Specification 3(c) of the
Trustee's Objection to the Bankrupt's Discharge*

practice. He became involved in the Mid-Island Dental Supply Corp. enterprise by reason of his efforts to obtain investments or loans for it for which he was to be compensated to the extent of 10% of the profits of the company. He probably was a convincing solicitor for he collected large sums of money for the corporation by way of loans for which it was to pay interest thereon to the lenders at the rate of 18%. It actually became another "Ponzi" affair. The bankrupt is held to account for the moneys which passed through his hands whether they were to be retained by him or whether he acted as a conduit for Mid-Island.

The records which the bankrupt may or may not have maintained of his receipts and disbursements of his dental practice is not questioned here. They do not form any part of the specifications we are here concerned with. It is his dealings with Mid-Island and the records of these transactions which is the subject of this memorandum.

The law on the subject of maintenance of records by bankrupts has been stated and re-stated by the courts on numerous occasions. They hold that records of substantial completeness and accuracy are required so that they may be checked against the mere oral statements or explanations made by the bankrupt. In re Underhill 82 F.2d 258, 259, 260 (C. C. A. 2nd). Another court (Moffett v. Union Bank, C.A. 9, 378 F.2d 10, 11,) said:-

"Primarily the duty to keep records is measured

*Opinion dated February 19, 1974 of Bankruptcy Judge
Rudin sustaining on remand Specification 3(c) of the
Trustee's Objection to the Bankrupt's Discharge*

by what is necessary to ascertain the bankrupt's financial status. xxx The key factor to consider in regard to the duty to keep books is the complexity of the matters and transactions which would be recorded."

See also *In re Halpern*, 387 F.2d 312 (C.A. 2nd Cir.1968).

Where, as here, the bankrupt was involved in many transactions of an extensive character, a substantially accurate and complete record of his affairs is a prerequisite to his discharge. With obligations outstanding in large sums in the form of notes and guarantees, it was a matter of importance that this bankrupt maintain records from which his financial condition could be ascertained.

The bankrupt's records primarily consists of 3 x 5 cards which he testified he kept with great accuracy. (S.M. p. 42, 12/28/71). He testified that they "are records that I was keeping of whoever had lent money in any form or received interest in any form, and the status of the loan, and whether it was repaid, and in what form". These cards were entered as trustee's Exhibit 7, 12/28/71.

The trustee, on the other hand, disputes the accuracy and the completeness of these cards. He points out that the alleged secured creditors, C.I.T. Corporation scheduled in the sum of \$8445.99 and First National City Bank scheduled in the sum of \$4376.32 do not appear on any of the cards. I have previously found that the security allegedly held by these creditors was non-existent but the debt to these creditors was real and owing. (See bankrupt's Schedule A2).

*Opinion dated February 19, 1974 of Bankruptcy Judge
Rudin sustaining on remand Specification 3(c) of the
Trustee's Objection to the Bankrupt's Discharge*

The bankrupt's brother-in-law, an accountant prepared a report entitled "Z. A. Dunn- Schedule of Contingent Liabilities and Corporate Liabilities" (Exhibit 8) The liabilities owing to C.I.T. Corporation and First National Bank are not shown on the Tesser report. Tesser made his report from an examination of the 3 x 5 cards and "from whatever other papers I was able to provide for him" (S.M. 58 12/28/71). The proceeds of the C.I.T. and First National Bank transactions went to Mid-Island.

The bankrupt also scheduled (A-3) the Industrial Credit Plan, Inc., as a money loan creditor in the sum of \$4331.94. This is likewise money he borrowed for the benefit of Mid-Island but the transaction does not appear in any of his records. (S.M. p. 67-68, 12/28/71).

Prior to and subsequent to the filing of the petition herein, the bankrupt furnished counsel to the trustee with the particulars of his transactions with Mid-Island. In comparing the itemized loans as they appear in this document with the schedules filed herein, substantial discrepancies appear. Yet each is represented to be an accurate record of his Mid-Island transactions. I herewith set them forth:-

Creditor	Schedules	Letter(Ex.3)
Rose Baron	\$25,500.00	\$28,000.00
Eugene Baron	43,757.00	41,425.66
Harold Kleiman	15,000.00	16,000.00
Sally Miller	29,500.00	30,000.00
Irving Millman	2,000.00	4,000.00
Mort Hirschhorn	5,500.00	5,000.00
Dr. Stanley Nelson	3,000.00	1,500.00

*Opinion dated February 19, 1974 of Bankruptcy Judge
Rudin sustaining on remand Specification 3(c) of the
Trustee's Objection to the Bankrupt's Discharge*

Confusion is added to confusion. The amounts owing to the bankrupt from Mid-Island is changed with each document obtained by the bankrupt. For example, Schedule B-3 of his filed bankruptcy schedules state Mid-Island owes him \$123,230.72; his statement or letter to the trustee (Ex. 3) dated October 31, 1966 shows Mid-Island owes him \$83,047.79, while a report obtained from his accountant brother-in-law shows Mid-Island to be indebted to him in the sum of \$51,333.87. (Ex. 8). If the bankrupt and his accountant cannot reconcile the amount owing him from Mid-Island, certainly creditors may not have better success. However, we are dealing with the issue of maintaining records from which his financial condition could be ascertained and his records fall short of the criterion.

The conclusion reached is that the bankrupt's records do not meet the standard required by law. It is impossible to ascertain his financial condition from the records he maintained. The loans from C.I.T., First National Bank and Industrial Credit Plan aggregating approximately \$17,000 do not appear on any record maintained by the bankrupt. The loan records (3 x 5 cards) of the "Ponzi" operations are not complete.

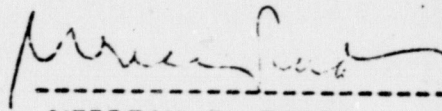
A 35a

*Opinion dated February 19, 1974 of Bankruptcy Judge
Rudin sustaining on remand Specification 3(c) of the
Trustee's Objection to the Bankrupt's Discharge*

Accordingly, I find the trustee to have sustained
specification 3c.

Submit order on notice.

Dated at Westbury, New York
February 19, 1974



WILLIAM J. RUDIN
Bankruptcy Judge

Order of Bankruptcy Judge Rudin dated March 13,
1974 sustaining Specification 3(c) and denying
Bankrupt's Discharge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN THE MATTER

- of -

67 B 256

ZALMEN A. DUNN

Bankrupt
-----X

AT Westbury, New York, in said district on the
day of March, 1974, 13th

IT appearing that Zalmen A. Dunn was adjudicated a bankrupt on a petition filed by him on March 3, 1967, and it further appearing that the trustee had filed objections to the bankrupt's discharge and that the parties had proceeded to trial on specifications 3(c), 3(d), 4(a), 4(c) and 4(d) (3) and (4) and on the 18th day of December, 1972, an order was duly entered by the Honorable William J. Rudin, Bankruptcy Judge herein, sustaining specifications 3(c), 3(d) and 4(a), and it further appearing that the bankrupt sought a petition to review said order by the United States District Court and said review having duly come on to be heard by the Honorable Jacob Mishler, District Judge, who reversed said order as to specifications 3(d) and 4(a) and dismissed them and remanded the matter for further hearing and/or

*Order of Bankruptcy Judge Rudin dated March 13, 1974
sustaining Specification 3(c) and denying
the Bankrupt his Discharge*

findings relating to specification 3 c) consistent with his decision and it further appearing the parties having deliberated and decided to have the Referee make new findings as to specification 3(c) on the basis of the existing record and waive new hearings;

NOW on reading and filing the decision of Honorable William J. Rubin, Bankruptcy Judge dated February 19, 1974,

containing his findings of fact and conclusions of law and his opinion sustaining the trustee's specification 3(c),

IT IS on the motion of Jacob F. Gottesman, attorney for the trustee,

ORDERED that specification 3(c) be and the same hereby is sustained and the bankrupt denied a discharge.

William J. Rudin

BANKRUPTCY JUDGE

Memorandum Decision of Chief Judge Mishler dated
July 25, 1974 affirming the Bankruptcy Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

67 B 256

In the Matter of

ZALMEN A. DUNN,

Memorandum of Decision

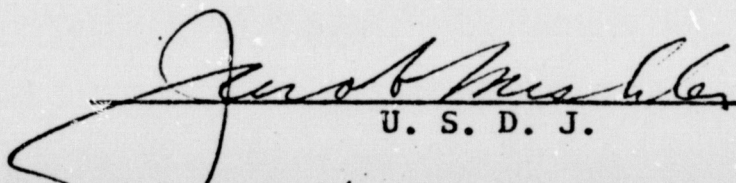
Bankrupt.

July 25, 1974

The bankrupt seeks review of the order made by William J. Rudin, Bankruptcy Judge, dated March 13, 1974, sustaining specification 3(c) of the trustee's objection to the bankrupt's discharge.

This court by memorandum of decision and order dated May 24, 1973, remanded the issue to the Bankruptcy Court for further findings. The memorandum of decision of the bankruptcy judge contains findings of fact upon which he concluded that the bankrupt failed to keep or maintain records from which the extent of bankrupt's claim against Mid-Island could be ascertained. The findings are supported by substantial evidence.

The order dated March 13, 1974 denying the bankrupt his discharge in bankruptcy is affirmed.


U. S. D. J.

Adjourned hearing on Specifications of Objections
to the Bankrupt's Discharge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
IN BANKRUPTCY

-----x

IN THE MATTER :

OF :

ZALMAN DUNN, :

No. 67-B-256

Bankrupt. :

-----x

Westbury, Long Island, New York
November 15, 1971,
At 12:15 o'clock p.m.

BEFORE:

HON. WILLIAM J. RUDIN,

Referee in Bankruptcy.

PROCEEDED PURSUANT TO ADJOURNMENT

- - - -

APPEARANCES:

LEVIN & WEINTRAUB, ESQS.,
Attorneys for the Bankrupt,
225 Broadway
New York, New York
By: ELIAS MANN, ESQ., of Counsel.

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

APPEARANCES: (Cont'd.)

JACOB P. GOTTESMAN, ESQ.,
Attorney for the Objecting Trustee,
295 Madison Avenue
New York, New York.

MR. ROBERT A. WIENER,
Appearing for Alexander Grant & Company,
Accountants to the Objecting Trustee,
1185 Sixth Avenue
New York, New York.

* * *

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

Dental Corporation, Dr. Dunn?

A Yes, there is.

Q And you are there taking a loss for an investment in Mid-Island Dental Supply; is that correct?

A Yes, that is right.

Q In what amount?

A In the amount of \$67,693.79.

Q And that income tax return we are in agreement applies to your affairs, to your income and disbursements, and so on, for 1966, and it was filed as we have agreed in September of 1967; is that correct?

A That is right.

Q Do you recall the date when you filed your schedules in bankruptcy in this Court?

A The exact date, do you mean?

Q Yes, sir.

A No, I don't.

Q I show them to you, Dr. Dunn (handing papers to the witness.)

A It says here March 3, 1967.

Q Now, you subsequently pursuant to an

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

understanding with me after a meeting of your creditors in the fall of 1966 gave me a letter which we have discussed on prior occasions, which bears the date of October 31, 1966. I have reference to the contents of this letter, Dr. Dunn (handing paper to the witness.)

Is that your statement of obligations due and owing by the Mid-Island Dental Supply to various people?

A Due and owing by Mid-Island Dental Supply, did you say?

Q Yes, sir.

A I don't know what your question is. Yes, I submitted this letter to you, obviously.

Q To me?

A Yes, to you.

Q Do you know what it says or what it refers to?

A It says here, "As you requested on Sunday I am furnishing you with the amounts owed to each creditor by the Mid-Island Dental Supply Corporation as reflected in my records."

MR. GOTTESMAN: I offer it in evidence,

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

if Your Honor please.

MR. MANN: No objection.

THEREFEREE: It will be marked.

(Letter dated October 31, 1966 from Dr.

Dunn to Mr. Gottesman, referred to above,
received in evidence and marked Objecting
Trustee's Exhibit 3, 11-15-71, J.J.Y.)

BY MR. GOTTESMAN:

Q The two purchases again, Dr. Dunn, the
C. I. T. transaction and the First National City
Bank transaction, the proceeds of those two trans-
actions went to the Mid-Island Dental Supply, did
they?

A Yes, they did.

Q And in one way or another you guaranteed
payment, did you not?

A Yes, I did.

Q Is there any reference to either trans-
action, to either the C. I. T. transaction or to
the First National City Bank transaction, in Ob-
jecting Trustee's Exhibit number 3 of today's
date (handing papers to the witness)?

A No, there is not.

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

Q It doesn't possibly take into consideration any depreciation for fixtures and furniture that might have come to you in 1963 or in 1964 through the instant transactions that we are discussing; is that correct?

A I don't follow you there, Mr. Gottesman.

MR. GOTTESMAN: I will withdraw the question.

Q The loss that you have for depreciation affects equipment for 1961; is that correct?

A No. This is again furniture and fixtures, and office building. The dental equipment is separate. It is 1953, 1957 and 1959.

Q All right. I'll accept your statement, Dr. Dunn.

A Yes.

Q There is no reference to any equipment that you acquired in 1963 or in 1964 there, is there?

A No, there is no reference to that.

Q Do you remember giving me what I have been calling a bill of particulars, Dr. Dunn, which sets forth the composition of your claim

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

for \$123,000.00 odd, which is referred to in
Schedule B-3 of your bankruptcy schedules; do you
remember that?

A I remember submitting to you something like
that. Did you say Schedule B-3?

Q Yes. Schedule B-3 is the schedule in
bankruptcy.

MR. MANN: It is Schedule B-3-C, Dr.

Dunn.

A That is a figure of \$123,230.72.

MR. GOTTESMAN: Will Your Honor bear
with me for just a moment, please?

THE REFEREE: Yes.

(Pause.)

Q Since I have some notes scrawled on the
side of this letter, Dr. Dunn, I will just fold it
over (complying.)

Now, is this the letter and the schedule
of the composition of the \$123,000.00 odd which
you claim to have loaned to the Mid-Island Dental
Supply, and which I now show you (handing paper
to the witness,?

A Would you repeat the question, please?

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

Q Yes. What does that paper which is attached to the letter from Levin & Weintraub have reference to, Dr. Dunn?

A It has reference to ----

MR. MANN: (Interposing) I object to that, if Your Honor pleases. How would the witness know what it has reference to?

MR. GOTTESMAN: You gave it to me.

MR. MANN: But he did not send it out. I sent it out.

THE WITNESS: Yes. This was sent by Mr. Mann.

THE REFEREE: Objection overruled. You may answer the question, if you can.

THE WITNESS: Well, it seems like it is a list of figures to indicate where that sum of \$123,230.72 was arrived at. All direct obligations to Dr. Dunn, \$50,000.00 ---- oh, these are various people who loaned money to Mid-Island Dental Supply to whom I might have been responsible, and I may have notes that I may have held.

Q Dr. Dunn, in your Schedule B-3-C of your

A

*Adjourned hearing on Objections of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

schedules in bankruptcy you have sworn to the following statement: "Choses-in-action," meaning claims or monies due you.

Now, will you read this statement?

A Yes. It says, "Mid-Island Dental Supply Corporation, 96 Allen Boulevard, Farmingdale, Long Island, New York, monies loaned to the corporation from 1960 to 1966 represented by notes."

Now, this is a breakdown of how that figure was arrived at.

MR. GOTTESMAN: I offer it in evidence, if the Court please. This is a letter from Levin & Weintraub dated September 11, 1967 to Jacob F. Gottesman showing how the figure of \$123,230.72 as reflected in Schedule B-3 was arrived at.

MR. MANN: No objection.

THE REFEREE: Have it marked.

(Letter from Levin & Weintraub to Jacob F. Gottesman, dated September 11, 1967, referred to above, received in evidence and marked Objecting Trustee's Exhibit 5, 11-15-71, J.J.Y.)

BY MR. GOTTESMAN:

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Westbury, Long Island, New York,
December 28, 1971,
At 10:30 o'clock a.m.

BEFORE:

HON. WILLIAM J. RUDIN,

Referee in Bankruptcy.

- - - -

* * *

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

THE REFEREE: You may proceed if you
are ready Mr. Gottesman.

Z A L M E N D U N N, the Bankrupt herein, residing at 2102 Washington Avenue, Seaford, Long Island, New York, resumed as a witness in behalf of the Objecting Trustee, having been previously duly sworn by the Referee, testified further as follows:

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn-- direct

A I turned over all the papers that I had which you requested, and I thought that everything I turned over was within these transactions. I turned over these other notes to you.

Q You did?

A I am sure that I did.

MR. GOTTESMAN: Mr. Mann, did you turn over any notes to me? You have a receipt from me, and I say categorically now in response to Dr. Dunn's statement that I never received any note.

MR. MANN: Mr. Gottesman, I cannot remember five years after the event what documents I turned over to you. There were many documents that I turned over to you, for which I never got a receipt.

THE WITNESS: Aren't they among the documentation that I gave you?

Q Do you mean these cards (indicating)?

A Yes, definitely.

Q Will you look at these cards, please, and tell me that (handing cards to the witness)?

A Yes.

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

(Pause.)

THE WITNESS: Here's one (indicating.)

Q And the card that you picked out pertains to ----

A (Interposing) And here's another one, and here's another one (indicating.)

Now, there are some more of them in here. Do you want me to get them all out?

Q First, let me ask you, Dr. Dunn, what are these cards?

MR. MANN: Well, let us get them all out first.

Q What are these cards, Dr. Dunn ?

A These are records that I was keeping of whoever had lent money in any form or received interest in any form, and the status of the loan, and whether it was repaid, and in what form.

These are my records which I thought I kept with great accuracy.

Q And you kept them in your own handwriting; is that correct?

A That is right. These are my own personal entries.

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

Q And among them you have singled out the people who are mentioned on Objecting Trustee's Exhibit 5, or some of them; is that correct?

A (NO response.)

Q That is the document that you have to your right there, Dr. Dunn (indicating.)

A Which ones do you mean?

Q They are the ones to your right there (indicating.)

A Yes, that is right.

MR. GOTTESMAN: I ask that they be marked for identification, if Your Honor please.

MR. MANN: Which cards do you mean?

MR. GOTTESMAN: I mean all the cards that he has given me.

MR. MANN: No objection.

THE REFEREE: They will be marked in evidence as one exhibit.

(Batch of cards in the handwriting of Dr. Dunn, referred to above, received in evidence and marked Objecting Trustee's Exhibit 7, 12-28-71, J.J.Y.)

* * *

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

didn't you?

A Yes.

Q And you took a check to yourself, you state?

A That is right; but I didn't owe the estate anything. I assume that I am stuck for the money.

Q What does Objecting Trustee's Exhibit 5 then represent, Dr. Dunn, will you explain that?

A This is I think a list of indebtednesses for which the creditor did not have a note from Mid-Island Dental Supply, but instead had some kind of recognition of the debt from me personally.

Q Doesn't that mean, Dr. Dunn, that you claim as you state on that Objecting Trustee's Exhibit 5 that you owe a certain amount of money to these people which you in turn turned over to the Mid-Island Dental Supply, and that's how you accumulated \$123,000.00 which you loaned to the company, as you set forth in your schedules in bankruptcy?

A Yes.

Q But you don't say anything about your father's estate, did you?

A 548
*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

A No.

Q When you prepared Objecting Trustee's Exhibit 5, Dr. Dunn, what was the source of what was due these accounts, the details that you set forth therein?

A On these cards, mostly on these cards.

Q Did you use anything else, Dr. Dunn?

A If there were any other notations or papers I would have used them, but I don't remember that. I imagine that these cards were my main source.

Q Did you use the Eli Tesser report? He was your accountant, wasn't he?

A I don't remember, but I may have.

Q Do you have that report?

A I don't even remember when that occurred. The Tesser report? I may have it or I may have used the cards. The report was taken mostly from these cards, if I remember correctly.

Q Do you have the Tesser report here?

A No, I don't.

Q You don't have it here?

A No, I don't have it at all.

Q Does Mr. Mann have a copy of the Tesser

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

report?

A I don't know, but he may have a copy of the Tesser report.

Q Do you recall, Dr. Dunn, with respect to the same question which I asked you when I was examining you on Objecting Trustee's Exhibit 5 when it was first given to me that in 1967 you told me that that was prepared from the accountant's report, from Mr. Tesser's report, and I questioned you on that?

A I don't recall your question and my answer, but if that was so then I would say that that was so. I am not trying to evade anything. It may have been that I no longer had the report, and I only had a copy of the report to go by, but I can only guess at that.

Q Can you give me a concrete answer now as to what you used to prepare Objecting Trustee's Exhibit 5, Dr. Dunn?

MR. MANN: I think the witness has already answered the question, if Your Honor please.

MR. GOTTESMAN: All right. Then, I

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

will take it.

Q I come back now, Dr. Dunn, and leave these exhibits there, please, and I bring your attention to Objecting Trustee's Exhibit 3 of the last hearing, which is the letter sent to me by you dated October 31, 1966 (handing papers to the witness.)

Will you look at it again, please?

A Yes.

Q Is that in your handwriting?

A Oh, yes, it is. Yes, I remember this letter.

Q And this letter ----

MR. GOTTESMAN: Question withdrawn.

Q For what purpose did you give me that letter?

A You had requested that I send you a list of the amounts of money that Mid-Island Dental Supply Corporation owed, and to whom it owed the money.

Q And are you a person named in that list?

A (No response.)

Q Will you turn to the last page there for that, please?

A 57a
*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

A Yes, I am.

Q For how much?

A For \$83,049.79.

Q And that was given to me about a half year before you filed your schedules in bankruptcy; is that correct?

A I don't remember when I filed my schedules in bankruptcy.

Q You filed your schedules in bankruptcy in March of 1967.

A Yes. Then, it was about a half year before that.

Q And that \$83,000.00 odd varies from the amount scheduled in your schedules in bankruptcy, doesn't it?

A Yes.

Q Is your father's estate mentioned in that letter?

A No, it is not.

Q Is the Kinzer mortgage mentioned in that letter, the \$15,000.00 with which we have opened our session this morning, Dr. Dunn?

A I don't see it, no.

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

Q And that item was also, or I mean,
rather, that mortgage transaction preceeded your
giving me that letter, did it not?

A I don't remember.

Q Can you try to fix that date, how old
the mortgage was on your property?

A I don't remember, Mr. Gottesman. It may
have been before, yes.

Q Well, you didn't have occasion to
borrow any money to give to the Mid-Island Dental
Supply after that letter was written, did you?

A Yes, it is right. So, it must have been before
this, yes.

Q All right. Now, I give you Objecting
Trustee's Exhibit 1 of November 15, 1971, Dr.
Dunn, which is the financial statement that you
gave to the Security National Bank (handing paper
to the witness.)

A Yes.

Q Is there any reflection on that state-
ment of the Kinzer transaction that you owed on
that mortgage \$15,000.00?

A I don't see any here.

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

record did you use?

A None whatsoever.

Q Are the entries correct or incorrect?

A They may or they may not be correct. If you will allow me to explain it to you, I can do so.

Q Did the bank ask you for the statement?

A When you say "the bank----"

MR. MANN: (Interposing) Your Honor, I am going to renew my objection. I think Mr. Gottesman is trying to get in through the back door what Your Honor did not permit through the front door, and we are going back to a truthful or an untruthful statement.

MR. GOTTESMAN: This all bears on his truthfulness, if the Court please, and you have that to decide under the objection that I have raised.

THE REFEREE: I will sustain the objection.

MR. GOTTESMAN: All right, then.

Q Dr. Dunn, I show you now an exhibit which was previously examined by you on November

A 608
*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

1, 1969 (handing paper to the witness.) Do you remember seeing that here in Court?

A Offhand I can't be sure, but is this the Eli Tesser report?

Q Yes, it is.

A Yes, I remember seeing it.

Q He is your accountant, Eli Tesser; is that correct?

A He is not my accountant. He is my brother-in-law.

Q But is he also an accountant?

A Yes, he is an accountant.

Q And did he prepare that paper from your cards?

A Yes, and from whatever other papers I was able to provide for him.

Q Do you have the original of that schedule, Dr. Dunn?

A No, I do not.

MR. GOTTESMAN: Do you have it, Mr. Mann?

MR. MANN: I do not know what you are referring to. Let me take a look at it.

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

MR. GOTTESMAN: That is Mr. Tesser's
report (handing paper to Mr. Mann.)

THE WITNESS: That is Eli Tesser's work
sheet that he made up.

MR. MANN: Yes, I have it.

MR. GOTTESMAN: May I have it, please?

MR. MANN: Yes (handing paper to Mr.
Gottesman.)

MR. GOTTESMAN: I would like to offer
this in evidence, if Your Honor please.

MR. MANN: I will object to that, Your
Honor. There is no foundation that has been
laid for it.

THE REFEREE: What is the purpose of this
offer, Mr. Gottesman?

MR. GOTTESMAN: I wish to show that the
cards that we have here were used by his
brother-in-law in preparing a work schedule
which the doctor used according to his pre-
vious testimony with respect to the prepara-
tion of Objecting Trustee's Exhibit 5, if
Your Honor please, and I want to interro-
gate him about it.

A 621
*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

THE REFEREE: Let me see Objecting
Trustee's Exhibit 5, please.

MR. GOTTESMAN: Yes, Your Honor (hand-
ing papers to the Referee.)

MR. MANN: First of all, Your Honor,
Objecting Trustee's Exhibit 5 was prepared
by me, and not by the accountant, Eli Tesser.
Should Mr. Gottesman want to put me on the
stand, I will be happy to take the stand and
testify to it.

MR. GOTTESMAN: All right, then.

MR. MANN: But I renew my objection, if
the Court please. There has been no proper
foundation laid for that so called report.

THE REFEREE: The objection is over-
ruled.

MR. MANN: Is Your Honor permitting
this to go in without the testimony of the
party who prepared the report?

THE REFEREE: I am. I hold that there
is sufficient in the record now with the
testimony of the witness-bankrupt to permit
this to go into evidence.

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

The objection is overruled. Mark it.

First, will you describe it for the record,
please?

MR. GOTTESMAN: Yes, Your Honor. This
is the Z. A. Dunn schedule of contingent
liabilities and corporate liabilities.

THE REFEREE: Have it marked.

(Z. A. Dunn schedule of contingent lia-
bilities and corporate liabilities, re-
ferred to above, received in evidence and
marked Objecting Trustee's Exhibit 8,
12-28-71, J.J.Y.)

BY MR. GOTTESMAN:

Q Dr. Dunn, do you remember when this Ob-
jecting Trustee's Exhibit 8 was prepared by Mr.
Tesser (handing paper to the witness)?

A Do you mean, the date?

Q Yes, I do.

A I don't remember the exact date, no, but it
was at the time that these other matters were
prepared.

Q Was it in 1966 after we had met in Mr.
Mann's office and in Mr. Ruback's office?

A 64 a

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Westbury, Long Island, New York,
June 21, 1972,
At 2:30 o'clock p.m.

BEFORE:

HON. WILLIAM J. RUDIN,

~~Referee in Bankruptcy.~~

* * *

A 651
*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

A I got that figure from my recollection.

Q And also the fact that the entire corpus was invested; is that correct?

A That is right. I knew that I had invested the corpus of \$35,000.00 in the Mid Island Dental Supply Corporation.

Q I now call your attention, Doctor, to Objecting Trustee's Exhibit number 3 ----

MR. MANN: No, I am sorry; I will withdraw that.

Q I now call your attention to Objecting Trustee's Exhibit number 5, which is a letter that I sent on September 11, 1967 to Mr. Gottesman----

MR. MANN: May I have that exhibit, Mr. Gottesman?

MR. GOTTESMAN: Yes (handing paper to Mr. Mann.)

Q The information which is attached to my letter indicates an obligation to you from the Mid Island Dental Supply of \$122,730.72 (handing paper to the witness.)

No reference is made in that exhibit to the \$35,000.00 which you have testified to that

A 668
*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

went to the Mid Island Dental Supply. Can you tell us, Number one, where did the information for that exhibit which I forwarded to Mr. Gottesman come from, Doctor?

A This information came from the various notes and records that I had maintained.

Q Now, no mention is made of the \$35,000.00 which you have testified to and which is reflected in your schedules in bankruptcy as being loaned to the Mid Island Dental Supply.

Is there any reason why it was omitted from that schedule, Doctor?

A Wasn't this the indebtedness of Mid Island Dental Supply to me? Oh, no. This was my indebtedness ---- what does this represent?

MR. GOTTESMAN: Read it, Dr. Dunn.

THE WITNESS: Well, this is my indebtedness, or rather, this is my assets and my liabilities.

(Whereupon Mr. Mann approached the witness.)

MR. GOTTESMAN: Mr. Mann, let him figure it out, will you, please?

A 671
*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*
Z. Dunn - direct

MR. MANN: I am not saying a word to him, Mr. Gottesman.

MR. GOTTESMAN: All right, then.

THE WITNESS: Oh, this represents my assets.

Q And when you say that "this represents my assets," Doctor, what assets are you referring to?

A I am referring to the monies that were owed to me by Mid Island Dental Supply.

Q And what about the \$35,000.00 which went to the Mid Island Dental Supply from the Estate of Jacob Dunn?

A That was no cash of mine. That was an indebtedness by the Mid Island Dental Supply to the Estate of Jacob Dunn.

Q Then, you are testifying that that obligation was a direct obligation from Mid Island Dental Supply?

A Oh, sure.

Q And how does it differ from these obligations that you have set forth on this exhibit?

A Well, there is no mention of the Estate of

A 682
*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

Jacob Dunn here at all.

Q But how does it differ from these people who are listed on this exhibit? These are people whose money went into Mid Island Dental Supply as well, are they not?

A Yes. These are people whose money went into Mid Island Dental Supply as well, but I had some connection with them. For instance, there is a direct obligation to Dr. Dunn. There were those people that I had given them my notes, and I had gotten a note in return for that from Mid Island Dental Supply, and they held my note for that indebtedness.

Q Did the Estate of Jacob Dunn hold your note?

A No, it did not.

Q In other words, the distinction you are making now and the distinction you made then is that the people who are listed on this schedule are people who gave you money, and you in turn gave them your note, and you in turn advanced the money to the corporation, to the Mid Island Dental Supply Corporation; is that correct, Doctor?

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

about, the exhibit.

Q Doctor, I show you a letter dated October 31, 1966 which has been introduced into evidence as Objecting Trustee's Exhibit number 3 on November 15, 1971, and I call your attention to ----

MR. GOTTESMAN: (Interposing) To the fact that it does not show any monies due.

Q (Continuing) which shows Zalmen A. Dunn in the amount of \$83,049.79, and I ask you whether you know how Eli Tesser ----

MR. MANN: Question withdrawn.

Q Were the figures which were supplied in this letter figures which were furnished to you by Eli Tesser, Doctor?

A Oh, no. You will notice by the date ---- no, I don't think so.

Q Can you tell us, then, where you got the figure of \$83,049.79 which was furnished by you in this letter to Mr. Gottesman?

A That was derived from whatever notes and memoranda that I had in my possession at that time.

Q Well, let's see if we can reconstruct it, Doctor.

Z. Dunn - direct

A Yes, sir.

Q Where did this figure of \$83,049.79
come from, Doctor?

A This was my own computation from the data and
records and notes that I had on hand, which I
furnished very hastily as you requested on Sunday,
and I said, "I am furnishing you with these
amounts."

Q With what amounts, Doctor?

A As listed in this letter.

MR. GOTTESMAN: Finish the sentence,
please, "That Mid Island Dental Supply owed
to each creditor."

THE WITNESS: By the Mid Island Dental
Supply Corporation as reflected in my records.
Then I went home and I wrote a handwritten
letter to Mr. Gottesman. Then subsequent to
that a professional accountant came in and
he came up with different figures.

He went to work on it, and he was able
to eliminate certain things which, perhaps I
had not calculated correctly.

MR. GOTTESMAN: And is the accountant

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

Mr. Tesser?

THE WITNESS: Yes. I am talking about

Mr. Tesser now.

Q Doctor, did you verify these figures before you sent them out in any way?

A No, I did not. I just copied them out, and I sent it to Mr. Gottesman from the cards that I had and from whatever other data that I had.

Q And you turned over all of your records and all of your cards, did you not, to Mr. Gottesman, with the exception of certain notes?

A I turned over everything to Mr. Gottesman that was requested of me.

Q Dr. Dunn, I think you testified that in your mind there is a difference between those creditors who advanced money to you and to whom you had furnished your own notes or checks, and those creditors who had advanced monies directly to the corporation, to the Mid Island Dental Supply Corporation, and who got notes directly from the corporation; is that correct?

A That there was a difference did you ask?

Q Yes. Did you not testify that those

Z. Dunn - direct

people who advanced money to you and to whom you had given your own personal notes or checks, and the proceeds of those loans were invested in the Mid Island Dental Supply Corporation, that you considered that as an obligation of the Mid Island Dental Supply Corporation to you; is that correct?

A Yes, that is correct.

Q And those are the people who are represented by this letter; is that correct?

A That is right.

Q And it also represents direct loans which you had made from your own sources to the corporation, to the Mid Island Dental Supply Corporation; is that correct?

A Yes, that is correct.

Q Now, Doctor, I show you a note made payable to the Estate of Jacob Dunn in the sum of \$3,000.00 by the Mid Island Dental Supply Co., and I ask you whether this is one of the many notes which were received by the Estate of Jacob Dunn in connection with the advance of the \$35,000.00 by the Estate of Jacob Dunn (handing paper to the witness)?

A **738**
*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

A Yes, I forgot to do it in these two cases,
yes.

Q But this amount of \$35,000.00 was in
fact advanced to the Mid Island Dental Supply
Corporation?

A That is my recollection, yes.

Q Now, Doctor, at the time that you pre-
pared the so called letter or bill of particulars
in October of 1966, what was your mental condition?

A I don't know how I can possibly describe it.
I never felt that way before or after that. I
was completely bewildered, completely shattered.
Everything I knew in the world had fallen apart.

Q And when for the first time did you
ascertain that the empire which Mr. Levy had
created was collapsing, Doctor?

A It was around September of 1966.

Q And this is approximately six months be-
fore you went into bankruptcy personally; is that
correct?

A That is right, yes.

THE REFEREE: Excuse me, but we will ad-
journ at this point, gentlemen. What ad-

*Adjourned Hearing on Specifications of Objections to the
Bankrupt's Discharge*

Westbury, Long Island, New York,
August 2, 1972,
At 2:30 o'clock p.m.

BEFORE -

HON. WILLIAM J. RUDIN,
Referee in Bankruptcy.

* * *

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

evidence. As you know, I searched high and low. I went through Mr. Wiener's basement and found cartons of papers and documents in a scramble.

I turned over all of these things to various people, and I just couldn't find them, but I have looked everywhere for them.

Q How did you arrive at the figure of \$35,000.00?

A That figure was firmly in my memory. My own accountant who audited the estate, when I asked him, "What was the value of the estate," he had told me that it was \$35,000.00, and I have never forgotten that.

Q And there are no further funds in the estate?

A No, there are no further funds in the estate.

Q And did you withdraw any portion of those funds for your own benefit, Dr. Dunn?

A No, never.

Q Now, Dr. Dunn, I now call your attention to Trustee's Exhibit 5, which is a summary of obligations of Mid-Island Dental Supply to yourself, which comes to \$122,000.00 and some odd

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

(handing paper to the witness.)

Do you recall the figures and the names
which are typed on that exhibit?

A Yes, I do.

Q Can you tell us how you arrived at
that figure of \$122,730.72?

MR. GOTTESMAN: The document speaks for
itself, Mr. Mann.

MR. MANN: I am coming to the basic
underlying documents now.

MR. GOTTESMAN: All right, then.

A Well, I listed here certain notes that I
had, either notes or checks.

Q You referred to check number 289, did
you not?

A Yes, I did.

Q For \$14,780.72, did you not?

A Yes, sir.

Q I show you a check which is undated of
the Mid-Island Dental Supply Corp. to your order,
Dr. Dunn, being check number 289, and ask you,
what does that represent (handing paper to the
witness)?

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

A That represents this direct obligation which is listed on this exhibit as check number 289 for \$14,780.72.

Q And this is a check of the Mid-Island Dental Supply issued to you?

A Yes, it is. This is issued by Murry Levy for the Mid-Island Dental Supply Corporation.

Q It is signed by Murry Levy on behalf of the Mid-Island Dental Supply; is that correct?

A Yes, that is correct.

MR. MANN: I offer this check in evidence, if the Court please.

THE REFEREE: Mr. Mann, if you have checks for each one of those items ----

MR. MANN: (Interposing) I have them; yes, Your Honor.

THE REFEREE: Then, why don't you offer them all in evidence at one time after showing them to Mr. Gottesman?

MR. MANN: There are only two others, Your Honor. The others are what we call the doctor had borrowed, which he in turn gave to the corporation, to the Mid-Island Dental

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

Supply Corporation, which I will prove by proofs of claim which were filed in this proceeding by each of these people with the exception of one.

THE REFEREE: Well, I am just thinking that perhaps you can shorten this proceeding.

MR. MANN: Then, Your Honor, perhaps for the record if Mr. Gottesman will concede it, and I will offer them as one exhibit, that we have the notes or the checks supporting the \$50,730.72 as reflected in sub-Paragraph A of Trustee's Exhibit 5 (handing papers to Mr. Gottesman.)

MR. GOTTESMAN: And will you explain these changes, also (indicating)?

MR. MANN: Yes, of course.

BY MR. MANN:

Q Dr. Dunn, I call your attention to a note dated April 1, 1960 in the original amount of \$13,775.00. There are changes on the face of this note (handing paper to the witness.)

Can you explain the changes?

A Yes, I can (indicating.)

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

MR. MANN: And let the record note that the witness indicates the inked notes on the righthand side of the notes.

THE WITNESS: Yes.

Q Basically what does it say; that there were payments made against the notes?

A Yes. Originally the note was for \$13,775.00, and there were various payments made which reduced the value of the note to \$10,750.00.

On the back of the note there is a notation as to why this is reduced by a \$2,000.00 repayment from the face amount of this note on 6-28-60.

Q And is that the balance which is reflected in Objecting Trustee's Exhibit 5, Sub-Paragraph A-3?

A Yes, exactly.

MR. MANN: All right. I offer all three of these notes as one exhibit in evidence, if Your Honor pleases.

THE REFEREE: Will you first describe them for the record?

MR. MANN: Yes, Your Honor. I offer in evidence a check in the amount of \$14,780.72,

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

which is undated; also, a note dated April 1, 1960 payable to Dr. Dunn in a reduced amount of \$10,750.00, and another is a note dated April 1, 1960 payable to Dr. Dunn in the sum of \$25,200.00.

MR. GOTTESMAN: No objection.

THE REFEREE: Mark them in evidence as one exhibit.

(Check in the amount of \$14,780.72, which is undated, together with a note dated April 1, 1960 to Dr. Dunn in the reduced amount of \$10,750.00, together with a note dated April 1, 1960 to Dr. Dunn in the amount of \$25,200.00, received in evidence and marked Bankrupt's Exhibit J, 8-2-72, J.J.Y.)

BY MR. MANN:

Q I show you now, Dr. Dunn, Objecting Trustee's Exhibit 8 which was prepared by Mr. Tesser (handing paper to the witness.)

Can you reconcile the figure of \$50,730.72 as reflected in Objecting Trustee's Exhibit 5 with the figures of Mr. Tesser as of his report, which is Objecting Trustee's Exhibit 8?

A 81a
*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

A Do you mean the \$59,000.00 figure here
(indicating)?

MR. MANN: The witness is pointing to
Objecting Trustee's Exhibit 8 on the last
page. He is pointing to the figures of
\$25,200.00, \$10,750.00 and \$14,780.72.

Q Is that correct, Dr. Dunn?

A Yes, that is correct.

Q I notice that there are two other items
down there of \$506.25 and of \$96.90. What do they
represent, Dr. Dunn?

A I don't know what it means.

Q May I refresh your recollection about
that, Doctor?

A Yes, of course.

Q Was it interest?

A Oh, yes, that is right. That was interest;
that is correct.

Q So that this figure of \$50,730.72 is
in fact reflected on Objecting Trustee's Exhibit
8; is that correct?

A Yes, it is.

Q In the very amounts which you have set

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

forth as direct obligations to you; is that correct?

A That is correct.

Q Now, let's go to Paragraph B of Objecting Trustee's Exhibit 5.

A Yes.

Q In which you set up obligations of \$56,000.00?

A Yes, sir.

Q Is it your position, Dr. Dunn, that that \$56,000.00 as reflected in that exhibit was in fact monies which you personally had borrowed, and then in turn had given to the corporation, to the Mid-Island Dental Supply Corporation?

A Yes, sir. That is exactly what happened. I borrowed it from these people, and they received my notes, and in turn I received a note from the Mid-Island Dental Supply Corporation for it.

MR. MANN: If I may have the Dr. Dunn claims, Your Honor, I think your staff said that they brought them out here into the Courtroom.

A 83a
*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

THE REFEREE: Well, here is the claims file in this matter, Mr. Mann (handing papers to Mr. Mann.)

Q Now, who is the first party mentioned from whom you borrowed money, and to whom you gave your own note, Doctor?

A Dr. Goodman, \$2,500.00.

MR. MANN: I ask that there be deemed marked in evidence, if Your Honor please, claim number 5 filed by Harold Goodman in the sum of \$2,500.00.

MR. GOTTESMAN: No objection.

MR. MANN: I call Your Honor's attention to the copy or photostat of the note which is annexed thereto, which is a note of Dr. Dunn to Mr. Goodman for the \$2,500.00.

THE REFEREE: It will be deemed marked in evidence.

(Claim number 5 filed by Dr. Harold Goodman in the sum of \$2,500.00, referred to above, received in evidence and deemed marked Bankrupt's Exhibit K, 8-2-72, J.J.Y.)

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

BY MR. MANN:

Q Now, who is the next party from whom
you borrowed money according to that exhibit,
Doctor?

A Hirschorn.

Q And how much is the amount?

A The amount is \$5,000.00.

MR. MANN: If Your Honor please, I ask
that claim number 6 filed by Mort Hirschorn
in the sum of \$5,000.00, together with a
copy of a note issued by Dr. Dunn, be deemed
marked in evidence.

MR. GOTTESMAN: No objection.

THE REFEREE: It will be deemed in evi-
dence.

(Claim number 6 filed by Mort Hirschorn
in the amount of \$5,000.00, together with
copy of note issued by Dr. Dunn, referred to
above, received in evidence and deemed
marked Bankrupt's Exhibit L, 8-2-72, J.J.Y.)

MR. MANN: Now, Your Honor, I can save
some time here if I can get a concession
from counsel that with the exception of Mr.

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

Nelson, who is number 6 for \$3,000.00, all of these claimants have filed claims for the amounts we allege in our exhibit, with notes attached to the documents.

MR. GOTTESMAN: All right, then.

THE REFEREE: Suppose you read those names into the record, Counsellor.

MR. MANN: Well, I will read them into the record, but the exhibit is in evidence, Your Honor.

THE REFEREE: Then, read the numbers of the claims into the record, Mr. Mann.

MR. MANN: Yes, Your Honor. They are claim number 35 filed by Jacquit; claim number 25 filed by Kaplan; claims numbers 31 and 32 filed by Pines; claims numbers 22 and 23 filed by Saber; claim number 20 filed by Shapiro; claim number 81 filed by Levine, and claim number 13 filed by Wolkoff.

BY MR. MANN:

Q Now, Dr. Dunn, each of these claimants in addition to Millman who did not file a claim, in fact lent money to you, and you in turn lent

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

the money to the corporation, to the Mid-Island
Dental Supply Corporation; is that correct?

A Is that in Exhibit 5 to which you were re-
ferring?

Q That is in Objecting Trustee's Exhibit
5-B, yes.

A Yes, that is exactly so.

Q And you gave each of these claimants
your own personal note; is that correct?

A That is correct.

Q And you treated these people as your
own personal creditors, did you?

A Yes, I did.

Q And the monies which they gave to you,
in turn you advanced to the corporation, to the
Mid-Island Dental Supply Corporation, and you
considered that as a loan to the corporation from
you; is that correct?

A That is correct.

Q And as a matter of fact did you not get
notes from the corporation, from the Mid-Island
Dental Supply, for each of these advances, Doctor?

A Yes, sir; in every case either a note or a

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

check.

MR. GOTTESMAN: May I ask one question at this time, and perhaps I will give a concession here?

MR. MANN: Yes, of course.

MR. GOTTESMAN: Where were these notes, Doctor?

THE WITNESS: I don't know what you mean by that, sir.

MR. MANN: In whose possession were they?

THE WITNESS: They were either in my possession or in Mr. Mann's possession.

MR. MANN: I will testify that they were in my possession from the day he went into bankruptcy.

MR. GOTTESMAN: Then, why weren't they turned over to the Trustee? I made a demand upon you for all of your records pertaining to Mid-Island Dental Supply and your records, Dr. Dunn, and now I find these in your possession.

I never saw them before.

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

MR. MANN: May I answer that, Your Honor?

THE REFEREE: You may.

MR. MANN: In September of 1967 I wrote to Mr. Gottesman and told him how we arrived at the amount of \$122,000.00.

MR. GOTTESMAN: That is not my question. Why weren't they turned over to me, and that is all I asked?

MR. MANN: We specifically mentioned specific notes. All you had to do was to ask me for them. We also mentioned specific checks.

Now, do I have a concession that with the exception of one person, and I think it may be Millman---- no, because I have Millman's note here ---- that with the exception of Nelson we have notes from the Mid-Island Dental Supply Corporation for the very notes which Dr. Dunn had given to these people?

May we have that concession, Mr. Gottesman?

MR. GOTTESMAN: I will give you the

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

Z. Dunn - direct

concession that you request.

MR. MANN: Thank you.

BY MR. MANN:

Q Now, Dr. Dunn, are each of these people from whom you had borrowed money, and in turn which you had advanced to the corporation, represented on the schedule of liabilities which was prepared by Mr. Tesser as Objecting Trustee's Exhibit 8, and which I now show you (handing paper to the witness)?

A Yes, I see their names here.

Q And the only different, therefore, between Objecting Trustee's Exhibit 8 and Objecting Trustee's Exhibit 5 is the way the accountant treated these people from whom you had borrowed money; is that correct?

A That is correct.

Q He classified them as contingent obligations; is that correct?

A Well, I don't know anything about that. I don't know anything about the accountant's report. I only know about the various data that I gave you as represented in Exhibit Number 5.

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

J. P. Gottesman - direct

examination?

THE WITNESS: Do you mean that I did
not file a claim there?

MR. MANN: Precisely.

Q Why didn't you file a claim there, Mr.
Gottesman?

THE REFEREE: What is the point about
this?

MR. MANN: To show that these sched-
ules are truthful, and even if they are not
truthful, Your Honor, there is an admitted
obligation of the Mid-Island Dental Supply
Corporation to Dr. Dunn.

Yet, the Trustee and the attorney for
the Trustee both failed to file any claim
whatsoever in the Mid-Island Dental Supply
proceeding, and I want the record to show
that.

THE REFEREE: Well, I do not see the
point in examining Mr. Gottesman on that
point.

THE WITNESS: Well, he could have
filed a claim in that proceeding, Your

A 918
*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

J. F. Gottesman - direct

Honor.

BY MR. MANN:

Q Now, Mr. Gottesman, I call your attention to Schedule B-3-C of Dr. Dunn's schedules in bankruptcy in which he alleges that there are monies due to Dr. Dunn, to himself, from Mid-Island Dental Supply Corp..

Did you ever see these schedules in bankruptcy before (handing papers to the witness)?

A I did.

Q And you knew that Dr. Dunn was asserting a claim against that corporation, against the Mid-Island Dental Supply Corporation, did you not?

A I did.

Q Did you, on behalf of the estate of DR. Dunn as Trustee file any claim in the proceeding of Mid-Island Dental Supply Corporation?

A No, I did not.

Q And was there a dividend in the Mid-Island Dental Supply proceeding?

A There was.

Q How much was it?

*Adjourned hearing on Specifications of Objections to the
Bankrupt's Discharge*

J. F. Gottesman - direct

A It was 8 percent.

THE REFEREE: Mr. Mann, how is that relevant to this proceeding? Are you trying to show that Mr. Gottesman or the Trustee were negligent? If you are that has nothing to do with this proceeding.

MR. MANN: I want to find out why he did not file a claim in the Mid-Island Dental Supply bankruptcy proceeding, Your Honor.

THE REFEREE: All of these questions and answers are stricken from the record.

MR. MANN: Now, Your Honor, Mr. Gottesman was too busy trying ----

THE REFEREE: (Interposing) Strike it out.

MR. MANN: I respectfully except, Your Honor.

THE REFEREE: You may have your exception. I do not take statements.

MR. MANN: May I make an offer of proof, Your Honor?

THE REFEREE: No, sir.

Trustee's Exhibit 8—Schedule of Liabilities

		Date of face ^{origination}	Debt	Proceeds	Payments to 10/5
1	P.T. Sanders &c 30-2-4453-29		611568		1 payment
2	Industrial Credit Corp -				
3	Unsecured loan to 2.A.D. - 1st wk.	1966			
4	24 payments X 254.82 per mo.		✓		
5					
6	Security National Bank				
7	&c 5BL-21-01-1773				
8	Secured loan to Grand home distri				1 payment X 290
9	Prods Corp - 2.A.D. Dunn (Pres.)				
10	Collateral - Addressograph Equip				
11	36 payments X 296.23 mo.	Feb-Mar 66	10664.28		
12					
13	Security Nat'l Bk.				
14	&c 21-51-1812		Seaford, C.I.		
15	Secured loan to 2.A.D.				
16	Collateral 1965 V.W. Truck				6 payments X 93
17	1965 Rambler Sedan		✓		
18	1963 Studebaker Hawk				
19	36 payments X 93.20 per mo.	March 66 APA 66	3380.40		
20					
21	Security Nat'l Bk.				
22	&c 21-11-1568				
23	Secured loan to 2.A.D.				14 payments X 329
24	Collateral - Cabin cruiser boat	yr 2	✓		
25	Boys?				
26	36 payments X 329.20 mo.	Aug 1965	11871.00		
27					
28	Security Nat'l Bk.				
29	&c 21-02-98424-3-500				14 payments X 160
30	Unsecured Personal loan				
31	36 payments X 162.00 mo.	Aug 1965	5832.00		
32					
33	First National City Bk.				
34	&c 01-4865-003				24 payments X 10
35					
36	60 payments X 165.33 mo.	Nov/Dec 1963	10099.20		
37					
38	C.I.T. Corp				
39	&c 01-01-01-01-77094-50		Madison, Ill.		23 payments X 22
40	Collateral - dental equip.				
41	36 payments X 228.22	Nov 1964	13690.40		
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6166.96

to made /86 -	Balance Unpaid 1.10.	Secured or Unsecured.	Remarks
198374	435194	Unsecured	<ul style="list-style-type: none"> - Proceeds of loan turned over to Fred Island Int'l Corp. - no evidence of loan issued by M.S.D. to 2nd bank - M.S.D. has been making payments directly to lender - with corporate checks
198361	868067	S	<ul style="list-style-type: none"> - secured by addresses, up 2 prop. - punch card from 10. Co. - M.S.D. has been making payments directly to lender with corporate checks
56340	281700	S	<ul style="list-style-type: none"> - Proceeds from loan turned over to M.S.D. - no evidence of loan issued by M.S.D. to 2nd bank - M.S.D. has been making monthly payments by corporate ch directly to lender
461650	725450	S	<ul style="list-style-type: none"> - Proceeds from loan turned over to M.S.D. - no evidence of loan issued by M.S.D. to 2nd bank - Collateral, purportedly conveyed from Murray to 2nd bank - M.S.D. has been making monthly payments directly to lender
2268-	356400	Unsecured	<ul style="list-style-type: none"> - Proceed from loan turned over to M.S.D. - no evidence of loan issued by M.S.D. to 2nd bank - M.S.D. has been making monthly payments directly to lender
572288	437632	?	<ul style="list-style-type: none"> - ?
525021	844599	Secured	<ul style="list-style-type: none"> - Proceeds from loan turned over to M.S.D. - no evidence of loan issued by M.S.D. to 2nd bank - M.S.D. has been making monthly payments directly to lender - ? re security
2218834	3941042		

		Date of origination	Face	Out	Proceeds	Payment To
1	Meadowbrook - Wash. Bk					
2	A/c #10-767x6-					
3	Maker - Harold Klemm	✓	Used for purchase			
4	2. A Dunn					
5	Unsecured personal note					24 payments x 77-
6	36 payments x 77 - Oct 1964	Oct 64	2770-			
7						
8	First Natl City Bk	✓	4000 -			
9	A/c # 5702-059-					
10	Maker - Harold Klemm					
11	2. A Dunn					27 payments x 34-
12	Unsecured personal note					
13	36 payments x 34-	July 1964	1224-			
14						
15	Security National Bk		20500-			
16	Secured loan -					
17	Collateral - Comm Int	Sold	10466.80 -			
18						
19	Security National Bk					
20	Secured loan -		6530-			
21	Collateral - Comm Int	Sold	10466.80 -			
22						
23	Security National Bk					
24						
25	Unsecured 90 day loan	✓	8500-			
26	due 10/1/66	10/1/66				
27						
28	Security National Bk					
29						
30	Unsecured 30 day loan		2500-			
31	due 10/1/66	10/1/66				
32						
33						
34	Totals					< 10365296
35						
36	U.S. Int'l Bank, etc.	✓				
37	in New York					
38						
39	Int'l Bank, etc.					
40						
41	Int'l Bank, etc.					
42						
43						
44						

Made
 10/5/66
 Balance
 Unpaid
 Secured or
 Unsecured

Remarks

241 663-

458.00

Longmont. & Henry - 2. RD pers notes -

002-

924 - Unsecured

918-

306 - Unsecured

As above.

(X)

20500

Secured

to be liquidated upon Sale of STKs 10/1/66 -

- proceeds turned over to M&B - note issued
by Corp to ZAB - \$25,200 -

6500

Secured

as above -
proceeds turned over to M&B - they issued check
to ZAB - drawn on Bankers Trust - \$289 - \$14,780.72 (A)

8500

Unsecured

to be repaid or renewed 12/1/66
- proceeds of loan turned over to M&B - Corp issued
Bankers Trust Check #289 - 14,780.72 (A)

(X)

2500

Unsecured

arise as a result of Transp. Co. secured loan -

by call at time

865067

251700

100000

181500

20500

6500

2500

29500

35000

3500

STK Loans

But proceeds for STK

had around

1645634

1890000

?

Creditor	Current Bal	Date of Origination	Interest Paid
Harold + Mildred Klemm	15000 - 10000 -	7/1/61 - 12/31/61 - 12/31/65	17 x 2
	25000 -	3/1/61 - 12/31/61 - 12/31/65	50 x 2
Marion Klemm		6/1/61 - 12/31/61 - 6/1/62	5 x 2
Lillian Bergman		4/1/61 - 12/31/61 - 10/1/62	4 x 2
Gertrude Wolkoff	2000 - 1000 -	1/1/61 - 12/31/61 - 12/31/65	30 x 2
	3000 -	12/31/61 - 12/31/65 - 2/1/66	28 x 2
Norma + Helen Stern		12/31/61 - 12/31/61 - 3/1/63	5 x 2
Sam Jacobson		2/1/62 - 12/31/62 - 12/31/63	9 x 2
Myron Rudolph		1/1/61 - 12/31/61 - 1/1/63	17 x 9
Esther Siegel	2000 - 2000 -	5/1/61 - 12/31/61 - 5/1/62	21 x 30
	4000 -	5/1/61 - 12/31/61 - 5/1/62	24 x 30
Lester Seber		1/1/64 - 12/31/64 - 6/1/65	5 x 60
Norma + Mildred Klemm		1/1/61 - 12/31/61 - 12/31/65	15 x 60
Harold + Mildred Klemm		1/3/61 - 12/31/61 - 9/1/62	4 x 30
L. D. Damm		9/1/61 - 12/31/61 - 9/1/62	12 x 30
John Ross, Baron	2000 -	6/1/61 - 12/31/61 - 9/1/63	15 x 30
Ross Baron	2000 -	2/1/61 - 12/31/61 - 9/1/63	13 x 30
John Baron	2000 -	2/1/61 - 12/31/61 - 9/1/63	13 x 30
L. D. Damm		9/1/61 - 11/1/61 - 3/1/65	18 x 30
Howard Siegel + Martin Ginsburg		7/1/60 - 12/31/60 - 4/1/61	9 x 100
Martin Ginsburg	7000 - 12000 -	4/1/61 - 12/31/61 - 6/1/62	38 x 100
	9000 -	2/1/62 - 12/31/62 - 6/1/64	22 x 180
		6/1/64 - 12/31/64 - 9/1/65	3 x 13
Arnold Miles	4500 - 2000 -	9/1/61 - 12/31/61 - 10/1/62	43 x 2
		10/1/62 - 12/31/62 - 12/31/65	1 x 2

Total Int
Paid
Rep'd

all other

How made Form

Ch	Co	Notes
15-	350-	} Loan - 10/1/62 - \$10361 - \$2500 - order of Harold A. Kellum.
50	820-	
90-	45-	Loan repaid 10/1/65 - Ch # 12,011 order of William Kellum
5-	630-	Loan repaid - 10/3/64 - Ch # 11962 order of E. Bergman
30-	400-	} Loan repaid 3/1/63 - Ch # 8307 order of John L. Webb, Jr.
15-	420-	
870-	815-	Loan repaid - 4/1/63 - Ch # 8285
30-	270-	Repaid 3/1/63 - Ch # 8306
0	530-	Repaid 2/1/63 - Ch # 8287
0	630-	" 2/1/64 - Ch # 10,007
	720-	" 5/1/64 - Ch # 10,963
	300-	" 6/6/64 - Ch # 1,163
	90-	*2000 - 4/1/64 - Ch # 10,701 - had been paid as ad 4/1/63 and still paid
	120-	repaid by 2. Kellum who loan over note
	360-	repaid by Murray Levy - \$2000 - on 4/1/64 - Ch # 2 A & still have note
	450-	} repaid 9/16/63 - Ch # 9413 -
	890-	
	390-	} repaid 3/1/63 - Ch # 8283
	540-	
	945-	repaid 4/1/64 and repaid with new note to M.G. Adams
	3490-	} repaid 6/1/64 - Ch # 11,171 - 10,000 - plus new note to M.G. for 9000 -
	3460-	
	4086-	repaid 4/1/64 - Ch # 11,334 - \$4,000 - plus new note for \$4,000
	9000	repaid 10/1/64 - Ch # 11,013 - \$10,000
	50-	repaid 10/1/64 - Ch # 11,013 - \$10,000 7/1/64 - \$18,111 - \$520 - 7/1/64 - \$16,400 - \$15 - 7/1/64 - \$1,100 - \$10 - 7/1/64 - \$1,100 - \$10 -

And that is the same as the

Trustee's Exhibit 8—Schedule of Liabilities

1961-	Fed. Tax - reported to Co, and income tax	1900-
	M. & D.	
1962-	Fed. Tax - reported to tax and M. & D.	1430-
1963-	Reported to tax and M. & D.	2360-
	ded. tax and exp. End of J. 1963	200-
1964-	Reported to tax and M. & D.	2250-
	ded. tax and exp. End of J. 1964	1000-
1965-	Reported to tax and M. & D.	13000-
	ded. tax and exp. End of J. 1965	3900-

Notice of Appeal to United States Court of Appeals

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
In the Matter

In Bankruptcy No.
67 B 256

of

NOTICE OF APPEAL TO
COURT OF APPEALS

ZALMEN A. DUNN,

Bankrupt.
-----x

The Bankrupt hereby appeals to the United States Court of Appeals for the Second Circuit from each and every part of the order entered by the Honorable Jacob M. Mishler, Chief Judge of the United States District Court, on July 25, 1974 affirming an order of the Honorable William J. Rudin Bankruptcy Judge entered March 13, 1974 sustaining Specification 3(c) of the Trustee's objection to the Bankrupt's discharge and denying the Bankrupt his discharge.

The parties to such order appealed from and the names and addresses of their respective attorneys are set forth below.

Dated: New York, New York
August 19, 1974

LEVIN & WEINTRAUB
Attorneys for Appellant
Office & P. O. Address
225 Broadway
New York, New York 10007
Tel. No. (212) 766-9555

Notice of Appeal to United States Court of Appeals

TO: HONORABLE JACOB M. MISHLER
Chief Judge
United States District Court
225 Cadman Plaza
Brooklyn, New York

HONORABLE WILLIAM J. RUDIN
Bankruptcy Judge
900 Ellison Avenue
Westbury, New York

JACOB F. GOTTESMAN, ESQ.
Attorney for Trustee,
Samuel Arutt
Office & P. O. Address
295 Madison Avenue
New York, New York 10017
Tel. No. (212) MU 3-2626

Copy received

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Jacob F. Hollenman

by M. Dolgner